United States Court of Appeals

for the Second Circuit

APPENDIX

74-1219

B
P&S

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 74-1219

UNITED STATES OF AMERICA,
Respondent,

—v.—

ARIEL POMARES and ANTONIO VECIANA,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX
Volume I—Pages A-1 to A-461

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UNITED STATES COURT OF APPEALS
FILED
MAY 7 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES (73 Cr. 793)

D. C. Form No. 109

CRIMINAL DOCKET

JUDGE PONSAL

73 CRIL 793

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: 266-6340
vs.	Eugene Ramnigan
ANTONIO VECIANA (ct.1)	
ARIEL TOMARES (both counts)	
	For Defendant:

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	
Fine,						
Clerk,						
Marshal,						
Attorney,						
Commissioner's Court,						
[illegible]; Ti;21:812,841(a)(1) &841						
(b)(1)(A)Posses with intent to dist.						
schedule II narcotic drug (Cocaine)						
(Ct.2)Conspiracy so to do(Ti. 21:846						
(Ct.1) TWO COUNTS						

DATE	PROCEEDINGS
8-10-73	Filed Indictment.
8-20-73	Pleading adjd to Sept.4,1973 Wyatt,J.
8-24-73	ANTONIO VECIANA: Filed notice cert fying that bail was fixed by Hon. Peter R. Palermo, Mag. for the Southern D Fla., in the sum of $2,500.
8-27-73	ANTONIO VECIANA: Filed the following documents received from U.S. for the Southern Distrct of Florida: (1) ORDER OF REMOVAL (A 1 (2) MAGISTRATE'S TEMPORARY COMMITMENT. (3) certified copy of MAGISTRATE'S WARRANT OF ARREST (

DOCKET ENTRIES (73 Cr. 793)

		PLAINTIFF	DEFENDANT
	(4) COMPLAINT (signed by Eugene W. Flynn, NYCPD.		
	(5) APPEARANCE BOND ($2,500.)		
	(6) CONDITIONS OF BOND (MAG. NO. 73-422 MO)		
	(7) RECEIPT FOR PAYMENT (amt. paid: $2,500.) for transfer of b		
	(8) xeroxed copy of RECEIPT FOR PAYMENT from Miami.		
	(9) ORDER GRANTING LEAVE TO TRAVEL		
	(10) MOTION FOR LEAVE TO TRAVEL		
8-30-73	Deft. Venciana(atty. present) Pleads not guilty. Deft. released on bail of $2,500. previously fixed by Magistrate. Bail limits to include the Southern Dist. of Florida. Ten(10) days for motion. Case assigned to Judge Bonsal for all purposes. Wyatt,J.		
	Filed motion of Mr. Barry L. Garber, Esq., for leave to participate in cause before Southern District of New York. Endorsement by Judge Wyatt dated 8-30-73 granting motion.		
9-4-73	Deft Ariel Pomares present. Pleading adj to 9-10-73. Duffy,J.		
9-5-73	ANTONIO VECIANA- filed notice of appearance of atty, by Garry L. Garber, of counsel for Rosner,Rosner & McEvoy 6 E. 43rd St, NYC 661-2150.		
9-10-73	ARIEL POMARES (atty present) deft pleads not guilty. 10 days for motions. Case assigned to Judge Bonsal. Deft cont'd on $50,000. secured by 10% cash. Bail limits are Puerto Rico,S.D.N.Y, & Miami. Duffy,J.		
9-24-73	A. POMARES- filed notice of appearance by Abraham Brodsky & Henry J. Boitel, 233 B'way,NYC 10007 732-6548-8104.		
11-8-73	Filed Govt's bill of particulars. (supplemental)		
11-8-73	Filed Govt's bill of particulars.		
12/74	Filed deft Pomares motion re: new trial ret: 3/13/74. (also 74 Cr 7)		
/18/74	Filed MEMO-END. on deft Pomares motion dtd 3/12/74. Motion for new trial denied. following argument. Bonsal,J. mn		

GSA DC 72-14455

DOCKET ENTRIES (74 Cr. 7)

Filed 2/18/74

JUDGE BONSAL 74 Cr. 7

DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	Bancroft Littlefield, USA
ANTONIO VECIANA	264-6344
ARIEL POMARES	
	For Defendant:

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DISBURSED
Fine,			3/6/74	Butler	5 —	
Clerk,			3/6/74	Travers		5 —
Marshal,						
Attorney,						
T.21						
846,812,841(a)(1),(b)						
Conasp. to viol. Fed. Narcotic Law			(Ct.1)			
Distr. & possess. w/intent to						
Distr. Cocaine II) Ct. 2						
(Two Counts)						

DATE	PROCEEDINGS
2-74	Filed indictment. (Superseding 73Cr.793 and assigned to Judge Bonsal)
2-8-74	Defts. Veciana and Pomares plead not guilty. Bail cont'd from indictment 73 Cr. 793. Veciana $2,500. Pomares $50,000 secured by 10% cash.
2-13-74	Jury Trial begun before Judge Bonsal.
2-18-74	Trial cont'd.
2-20-74	Trial cont'd.
2-21-74	Trial cont'd.
2-22-74	Trial cont'd and concluded. Deft Veciana Guilty cts 1& 2. Deft Pomares Guilty cts. 1 & 2. 3-27-74 set for Sentence. Pre-sentence report ordered. Deft remanded. Bonsal,J.
3/4	Deft's bail exonerated

A 3

DOCKET ENTRIES (74 Cr. 7)

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDA
3/12/74	Filed deft Pomares motion re: new trial ret: 3/13/74. (also 73 Cr 793)		
3/18/74	Filed deft Veciana's P.R.B. in the sum of $100,000. pending appeal.		
3/18/74	Filed MEMO-END. on motion dtd 3/12/74 for new trial..Motion for new trial denied following argument. Bonsal,J. mn		
3/13/74	ANTONIO VECIANA- Filed JUDGMENT (atty present) Deft is committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of SEVEN (7) YEARS on each of cc 1 and 2, to run concurrently with each other. Pursuant to the provisions of Section 841 of T. 21, U.S. Code, deft. is placed Special Parole for a period of THREE (3) YEARS, to commence u the expiration of confinement. Pursunat to Section 4208 (a)(2) T. 18,U.S. Code, deft. shall become eligible for parole at su time as the Board of Parole may determine. Deft remanded in l of bail pending appeal fixed in the amount of $100,000. Bonsa 3/19/74 Issued commitments.		ent. 3/1
3/13/74	ARIEL POMARES- Filed JUDGMENT (atty present) Deft is hereby committed the custody of the Atty General or his authorized representative imprisonment for a period of FIVE (5) YEARS on each of counts 1 2, to run concurrently with each other. Pursunat to the provisio of Section 841 of T. 21, U.S. Code, deft is placed on Special Pa for a period of THREE (3) YEARS, to commence upon expiration of finement. Pursuant to Section 4208 (a)(2) of T. 18, U.S. Code, d shall become eligible for parole at such time as the Board of P may determine. Deft is remanded in lieu of bail pending appeal i in the amount of $75,000. Bonsal,J. 3/19/74 Issued commitments.		ent. 3/1
3/13/74	Filed defts' NOTICE OF APPEAL from judgments dtd 3/13/74. mailed copies to U.S. Atty; defts.		

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [illegible] Deputy Clerk

USA-33s-538 - IND./INF. (Conspiracy to distribute and possess with
Rev. 5-27-72 intent to distribute narcotic drug.)

~~EMBart~~
73-2383

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

-v- : INDICTMENT

ANTONIO VECIANA and : 73 Cr. 793
ARIEL POMARES, :

:

:

Defendants . :

- -x

The Grand Jury charges:

1. From on or about the 1st day of November, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, ANTONIO VECIANA and ARIEL POMARES, the defendants and Augustin Barrea named as a co-conspirator but not as a defendant, ~~the defendant~~ and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute

and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about July 23, 1973, ARIEL POMARES registered at the Americana Hotel, 7th Avenue and 52nd Street, New York, New York.

2. On or about July 23, 1973, Augustin Barres met ARIEL POMARES at the AmericanaHotel, 7th Avenue and 52nd Street, New York, New York.

3. On or about July 23, 1973, ARIEL POMARES travelled to the Hotel Taft, 777 7th Avenue, New York, New York and delivered approximately 7 kilograms of cocaine to Augustin Barres.

4. On or about July 23, 1973, Augustin Barres delivered approximately 7 kilograms of cocaine to another person at the Hotel Taft, 777 7th Avenue, New York, New York.

(Title 21, United States Code, Section 846)

SECOND COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1973, in the Southern District of New York,

ARIEL ROMARES

the defendant , unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 7 kilograms of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

Foreman

PAUL J. CURRAN
United States Attorney

BL,Jr:ilf
73-2303

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM 7

UNITED STATES OF AMERICA, : INDICTMENT

-v- : 73 Cr. 793

ANTONIO VECIANA and
ARIEL POMARES, :

Defendant . :

U.S. DISTRICT COURT
FILED
JAN 4 1974
S. D. OF N.Y.

The Grand Jury charges:

1. From on or about the 1st day of November, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, ANTONIO VECIANA and ARIEL POMARES, the defendants and Augustin Barrios, a co-conspirator, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

BL,Jr:ilf
73-2383

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York: and elsewhere:

1. On or about July 21, 1973 ANTONIO VECIANA, ARIEL POMARES and Augustin Barres met together at 111 International Hotel, Italian Village, Miami, Florida.

2. On or about July 21, 1973, ANTONIO VECIANA delivered approximately 10 kilograms of cocaine to ARIEL POMARES in a parking lot in Miami, Florida.

3. On or about July 23, 1973, ARIEL POMARES registered at the Americana Hotel, 7th Avenue and 52nd Street, New York, New York.

4. On or about July 23, 1973, Augustin Barres met ARIEL POMARES at the Americana Hotel, 7th Avenue and 52nd Street, New York, New York.

5. On or about July 23, 1973, ARIEL POMARES travelled to the Hotel Taft, 777 7th Avenue, New York, New York and delivered approximately 7 kilograms of cocaine to Augustin Barres.

6. On or about July 23, 1973, Augustin Barres delivered approximately 7 kilograms of cocaine to another person at the Hotel Taft, 777 7th Avenue, New York, New York.

(Title 21, United States Code, Section 846)

SECOND COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1973, in the Southern District of New York, ANTONIO VECIANA and ARIEL POMARES

the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 7 kilograms of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

Isabel B Steiner
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

GOVERNMENT'S BILL OF PARTICULARS

[SAME CAPTION]

The United States of America, as and for its Bill of Particulars herein, alleges:

As To The First Count

Overt Acts	Time	Place	Persons Present
1.	Approximately 12:30 P.M., July 23, 1973	Hotel Americana, 7th Avenue and 52 Street, New York, New York	Augustin Barres
2.	Approximately 12:30 P.M., July 23, 1973	Hotel Americana, 7th Avenue and 52nd Street, New York, New York	Augustin Barres and Ariel Pomares
3.	Between approximately 12:30 P.M. and 1:15 P.M., July 23, 1973	Hotel Taft, 777 7th Avenue, New York, New York	Unknown
4.	Approximately 1:25 P.M., July 23, 1973	Hotel Taft, 777 7th Avenue, New York, New York	Augustin Barres and an undercover officer assigned to the Drug Enforcement Administration, Task Force

As To The Second Count

Time	Place	Persons Present
Approximately 1:25 P.M., July 23, 1973	Room 1011, Americana Hotel, 7th Avenue and 52nd Street, New York, New York	Augustin Barres and an undercover officer assigned to the Drug Enforcement Administration, Task Force

GOVERNMENT'S BILL OF PARTICULARS

Dated: New York, New York

September 24, 1973

Yours, etc.,

PAUL J. CURRAN
United Stated Attorney for the
Southern District of New York
Attorney for the United States
of America

By: _____
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Assistant United States Attorney
Office and Post Office Address:
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New York, New York 10007
Tel: (212) 264-6346

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New York, New York 10017

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Miami, Florida 33130

ABRAHAM H. BRODSKY, ESQ.
233 Broadway
New York, New York

GOVERNMENT'S SUPPLEMENTAL BILL OF PARTICULARS

[Same Caption]

The United States of America, as and for its Supplemental Bill of Particulars herein, alleges:

1. On or about July 21, 1973 Antonio Veciana, Ariel Palmares and Augustin Barres met together at 111 International Hotel, Italian Village, Miami, Florida.

2. On or about July 21, 1973, Antonio Veciana delivered approximately 10 kilograms of cocaine to Ariel Palmares in the parking lot of 111 International Hotel, Italian Village, Miami, Florida.

3. On or about July 21, 1973, Ariel Palmares delivered approximately 10 kilograms of cocaine to Augustin Barres at 111 International Hotel, Italian Village, Miami, Florida.

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: _____
EUGENE F. BANNIGAN
Assistant United States Attorney
Office and Post Office Address
United States Courthouse
Foley Square
New York, New York 10007
Tel.(212)264-6346

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
vs.	73 Cr. 793
ANTONIO VECIANA and ARIEL POMARES,	
Defendants.	

October 4, 1973
9:45 a.m.

Before: HON. DUDLEY B. BONSAL,
District Judge

APPEARANCES

PAUL J. CURRAN, ESQ.

United States Attorney for the
Southern District of New York

BY: EUGENE BANNIGAN, ESQ.
Assistant United States Attorney

JONATHAN L. ROSNER, ESQ.

Attorney for Defendant Veciana.

HENRY J. BOITEL, ESQ.

Attorney for Defendant Pomares.

THE COURT: Mr. Bannigan, what is the status of Mr. Pomares, or Mrs. Pomares, Ariel?

MR. BANNIGAN: It is Mr. He has pleaded. I believe he did some time ago.

THE COURT: All right. I lost track of that. So he has pleaded, and that was done in Room 110. So all I have is Antonio Veciana.

MR. BANNIGAN: I believe he has pleaded also.

MR. ROSNER: I believe he has given the wrong impression. Both defendants have pleaded not guilty.

MR. BANNIGAN: Not guilty.

THE COURT: What is the status? So the trial involves both these defendants.

MR. BANNIGAN: That's correct.

THE COURT: That's what I'm trying to get at.

MR. ROSNER: Maybe, your Honor.

THE COURT: All right, maybe. I want to start with that because I didn't see anything about Mr. Pomares in the record here, in the docket sheet.

MR. BOLTEL: He plead not guilty on September 10, 1973.

THE COURT: There is no entry in here for September 10. All right. Veciana plead not guilty on August 30th. That's what I have here.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Mr. Veciana, as I understand it, was transferred from Florida, is that correct?

MR. BANNIGAN: He was arrested there, but the indictment is here. There was a complaint issued in the Southern District. He was arrested there, and pursuant to Rule 40 he was brought up here.

THE COURT: All right. So are there any problems here as to trial?

MR. BANNIGAN: We had a discovery session, a brief one. It was to discuss cooperation. I have supplied materials a bill of particulars, statements of the defendants, chemists' reports, and so forth.

THE COURT: There is a conspiracy count involving both these defendants and a substantive count involving Pomares only.

MR. BANNIGAN: That is correct. It is quite possible there will be a superseding to add the other defendant to the substantive count. That is something that is being held in abeyance pending discussion between counsel and the government.

THE COURT: I think the first thing I will do is set down a date for trial.

MR. ROSNER: If I may presume on the Court's patience, as Mr. Bannigan has indicated, there have been

discussions concerning potential assistance by the defendants to the government, and I suspect that Mr. Bannigan will agree with me that if much public knowledge of all of these proceedings is known, the cooperation that they might give would be substantially defeated.

In addition, there are, I believe, some matters where the government and defense counsel disagree on the scope of the particulars furnished and certain items with respect to discovery.

THE COURT: Have you finished discussing those so that you know what items are in disagreement?

MR. ROSNER: I think we have, your Honor.

THE COURT: What I think I would like to do is to set down a date for trial and I'll review with you these matters and see if I can resolve them.

MR. ROSNER: I might add, your Honor, as I believe I indicated to the Court in my letter of August 30th, I am not trial counsel for Mr. Veciana, I am local counsel. Mr. Garber---

THE COURT: He is the gentleman from Florida?

MR. ROSNER: Yes. He is trial counsel. Obviously, I will advise him this afternoon by telephone as to the date that your Honor fixes.

THE COURT: Okay. We've got the six month rule here. I've got to sit in Part 1 a little later on in the fall,

and what I would like to do is to suggest as a trial date December 26, which is the day after Christmas.

MR. BANNIGAN: That is exactly six months. July 26, did you say? July 26 was Mr. Pomares' date of arrest.

THE COURT: The indictment I got was filed August 10th.

MR. BANNIGAN: But he was arrested July 26th. It is either date of indictment or arrest, whichever is earlier. I mean, that is agreeable. We will be ready for trial on that date or even earlier, if you want.

MR. ROSNER: In that regard, if it would assist both the Court and the government, I think that at the time we met with Mr. Bannigan both Mr. Garber, Mr. Boitel and Mr. Brodsky and I indicated to Mr. Bannigan that, particularly in the context of possible cooperation, we would be prepared, as would the clients, to waive the six month rule.

THE COURT: All right. Well, let's set down that date. I want to have a trial date, obviously, one that everybody agrees would be within the six months. Is that right?

MR. BANNIGAN: Yes. The defendant was arrested July 26th. It is exactly six months.

THE COURT: All right. How long a trial do you think it will be?

MR. BANNIGAN: The government's case would take

one week, about a week, maybe four days depending on the kinds of motions there are to be disposed of beforehand.

THE COURT: And of course you gentlemen don't know, I don't suppose, how long your case will take. But the run of these cases I guess wouldn't be too long. I would hope we could do it all in a week. Of course, we have some holidays there.

MR. ROSNER: There was another matter that obviously Mr. Bannigan and I discussed and he has to make a decision on, and that is a potential severance problem under Bruton since one of the defendants did give a statement and the other one did not.

belt 2

MR. BANNIGAN: I can resolve that right now. We will not use the statement.

THE COURT: You will not use the statement. Then there is no problem under Bruton.

All right, gentlemen, we will set it down for trial for December 26th.

What are the discovery problems on which you gentlemen have difficulty?

MR. BANNIGAN: What we had was an informal discussion and various matters were requested, some of which I consented to and some of which I was opposed to. There has not been a formal motion with respect to those items which I

have opposed.

THE COURT: I am trying to avoid the necessity of too many formal motions and see if we can reach a determination on those so that you can go ahead and get ready for trial.

What are the matters in dispute?

MR. ROSNER: We are somewhat in the dark as to what discovery the government has afforded Mr. Veciana since Mr. Bannigan indicated to me that it was sent to Mr. Garber in Florida rather than to myself.

THE COURT: What was that? Did you send some papers to Garber?

MR. BANNIGAN: I sent a bill of particulars, acopy of chich I sent to Mr. Rosner.

MR. ROSNER: That I have.

MR. BANNIGAN: And a copy of the statements of defendant under Rule 16, recorded statements. I was furnished copies of scientific reports to be used, and I believe that's all.

MR. ROSNER: I think there was a question with respect to the fingerprint reports.

MR. BANNIGAN: That was sent, a negative report. A copy was sent.

THE COURT: Did the defendants testify before the grand jury?

MR. BANNIGAN: They did not.

MR. ROSNER: If you will, a negative assurance with respect to electronic surveillance.

MR. BANNIGAN: That has to be obtained from Washington. I haven't gotten it back yet.

THE COURT: You'll find out about that.

MR. ROSNER: One other item that we discussed and I believe the government undertook to obtain, and I appreciate that there could be a substantial time problem as well as a ministerial problem, so to speak, in obtaining it, is any and all information and documentation with respect to the defendant Veciana's employment by government agencies.

MR. BANNIGAN: I think the agencies --- if it was that broad, I think what I would seek is whether the employment undertaken by either Mr. Veciana or Mr. Pomares for any government agency, particularly the Federal Bureau of Investigation or the Central Intelligence Agency, in any way related to the charges in this case, and that I have not gotten an answer back on yet.

THE COURT: Well, let me see if I can focus on that one a little bit. Do you gentlemen say that each of these defendants was employed at some time by a government agency?

MR. ROSNER: I can only speak for the defendant

Veciana.

MR. BANNIGAN: We know Veciana was, at least by the Federal Bureau of Investigation.

MR. ROSNER: I can go beyond that as far as the information that I have is concerned, and I would hope that this would obviously be kept in confidence.

It is my understanding that he was overtly at some point an employee of one of the International Development Agencies.

MR. BANNIGAN: He was an employee of the Bank for International Development in South America. I'm not exactly sure of the name.

MR. ROSNER: I think he is also an employee of the Agency for International Development, a governmental agency.

THE COURT: When was that?

MR. ROSNER: And covertly was working for the Central Intelligence Agency.

MR. BANNIGAN: This was a number of years ago, and it was in South America.

THE COURT: It sounds like Watergate.

MR. BANNIGAN: I hope not.

THE COURT: You say this was several years ago?

MR. BANNIGAN: Yes.

THE COURT: All right. And this indictment, the

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conspiracy count, seems to run from November 1, 1972 to the date of the filing of the indictment, and the overt acts are in July, 1973 and the second count charges an alleged possession with intent to distribute on July 23, 1973.

I am a little puzzled as to what difference it might make whether a defendant has been employed by the government previously.

MR. ROSNER: It is my understanding, your Honor, and I think Mr. Bannigan is aware of this situation, that there are or may be --- how can I best caption this? --- quasi-political implications in their activities.

THE COURT: The only charge I have is a conspiracy and a substantive count to distribute narcotics, and offhand it escapes me that there would be any connection political or otherwise.

MR. BANNIGAN: The only thing I can suggest, your Honor, is that Mr. Veciana, in addition to working for the agencies that have already been mentioned, has some affiliation with some Cuban revolutionary groups.

It is possible, although I think unlikely, that that affiliation with the group may be as a covert agent, that there may be some relationship to the transactions here and that group, raising funds to continue their activities. We just don't know that yet.

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In that sense there may be some --- I mean it is possible he was working for the Central Intelligence Agency when he did this. I would hope not.

THE COURT: You mean selling narcotics?

MR. ROSNER: Crazier things than that have happened, your Honor, as I'm sure the Court knows.

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THE COURT: I've had the sad experience, in my years, of having a lot of these Cuban fellows appear here on narcotics charges, and they have either been convicted or they plead guilty, and I think that is very unfortunate, but it is true, and I will have a little trouble finding a relationship unless it is spelled out pretty clearly.

What else is outstanding? You say you sent these fellows to Garber and he has given you a copy today, especially the bill of particulars.

MR. ROSNER: With respect to the bill of particulars I think Mr. Bannigan indicated, when we had our informal conference, going down the list of items that we requested, that, number one, there were no other alleged conspirators known to the government.

MR. BANNIGAN: Other than Mr. Barres.

THE COURT: Who is named as a co-conspirator, isn't he?

MR. ROSNER: Yes. It seems to me, to protect our

clients ---

THE COURT: I'll ask the government, if any information comes to their attention between now and the date of trial as to any other conspirator, to inform you.

MR. BANNIGAN: We certainly will.

THE COURT: And you'll do that. All right.

MR. ROSNER: Similarly, your Honor, we ask, by way of candidly limiting the government's proof, what controlled substance specifically is referred to in the indictment. The government indicated cocaine, but didn't furnish that specifically in the particulars. It just seemed to me, in the interest of our clients, we should pin that down.

THE COURT: Did you say something about an analysis?

MR. BANNIGAN: I did furnish the analysis of all the narcotics in this case.

THE COURT: To Gerber?

MR. BANNIGAN: And it is exclusively cocaine.

THE COURT: Do you want to know any more than that it was cocaine?

MR. ROSNER: The problem is that that obviously relates to the sale count, in which our client, at least at this juncture, is not named. He is named only in the conspiracy, and the conspiracy could deal with any controlled substance.

MR. BANNIGAN: I will write counsel a letter, if

he wants, stating that the conspiracy, to the best of our knowledge, involved merely cocaine.

THE COURT: It is on the record. Why do you need the letter? You made the statement on the record.

MR. ROSNER: Fine.

MR. BANNIGAN: Of course, if I find out there was something else involved, I'll let him know that.

THE COURT: All right.

MR. ROSNER: Similarly, I would like to ask the government to put on the record what they advised us informally in our conference, and that is that the alleged conspirator Pomares, who now appears to be cooperating with the government, was not acting for and on behalf of the government during the period of investigation.

MR. BANNIGAN: He was not, your Honor.

THE COURT: All right.

MR. ROSNER: And the last item, which I know is always vigorously opposed by the government, as indeed I opposed it when I was with the government, is in substance for all of the overt acts not set forth in the indictment under the conspiracy count, and my reason for that is quite simple:

A perusal of the indictment as far as the defendant Veciana is concerned, really indicates nothing. He is named as a defendant conspirator but is not identified in any

one of the overt acts, and right now we have the indictment drafted in language to track the statute and that's all. But I am sure the Court can appreciate that in the light of that it is difficult to prepare any kind of factual defense.

THE COURT: Well, I don't know, of course, what the bill of particulars provides in that respect. I notice that Veciana is not named in the overt act.

On the other hand, the government doesn't have to produce all its evidence on the conspiracy count just for that reason, I don't think.

Let me see your bill of particulars.

(Pause.)

THE COURT: There was nothing in the indictment or the bill of particulars particularizing in any way Veciana's participation.

MR. BANNIGAN: As to Mr. Veciana, to our knowledge one of the reasons he is not in the overt act is that he was never in the Southern District of New York in relation to the conspiracy. If I find out that he was, in this case, I will advise counsel. No problem with that.

THE COURT: I am wondering if Veciana isn't entitled to something indicating that he has something to do with count one here, not count two, because he isn't named. Hasn't the government got some information which they could make

available to Veciana to show why in the devil he is in here?

MR. BANNIGAN: A substantial amount of information, some of which ---

THE COURT: I don't think you have to put all the evidence in, but I do think that at least enough for Mr. Veciana to prepare for trial and know in some way why he is in here.

MR. BANNIGAN: All right, your Honor. I will supply an amended supplemental bill setting forth some overt acts committed by Mr. Veciana elsewhere, that is, in the Southern District of Florida.

THE COURT: That's all right. I mean he is entitled to prepare for trial.

MR. ROSNER: Yes, your Honor.

THE COURT: And I don't think you are required to supply all the overt acts that you think you have, but I would like you to supply enough so that Mr. Veciana knows what he's got to prepare for in the trial.

How soon could you do that?

MR. BANNIGAN: I'll try to get it out this week. I could do it by bill of particulars or I could just tell you about it, any way you would. It doesn't matter to me.

MR. ROSNER: Do it by letter, if that is going to be easier for the government.

THE COURT: Let us do it that the government will furnish this information within ten days. That would be fair enough.

How do you want to do that? You want to have a copy, and I guess Florida counsel ought to have a copy.

MR. BANNIGAN: I will send a copy to all counsel in the case.

THE COURT: Okay. Ten days all right?

MR. BANNIGAN: Yes, sir.

THE COURT: Does that cover the problems?

MR. ROSNER: I believe so, your Honor.

THE COURT: All right. Have you got any problems?

MR. BOITEL: Not that I am aware of.

THE COURT: All right. With that, we are ready to go to trial on December 26th.

I would just like to say to you that if there is going to be a disposition in either of these cases, let me know as soon as possible because we are awfully hard pressed in this Court, and I am just asking you as officers of the Court to let me know as soon as possible if there is going to be, so that I can figure my life accordingly.

MR. ROSNER: Candidly, what I would anticipate might be the next step if the assistance that we discussed with Mr. Bannigan eventuates is a waiver of the six month rule

and an adjournment of the matter pending the outcome of whatever assistance we agree upon.

THE COURT: That is something that you might do. But I would like to get these cases disposed of, too. I don't like to have them lying around. There's something awfully intangible about these things. I think I would like to get the case over with one way or the other.

All right. Does that cover us, gentlemen?

MR. BANNIGAN: I believe so, yes.

I would ask that this record be sealed.

MR. ROSNER: We consent.

MR. BOITEL: I do, too.

THE COURT: It will be sealed by sending it up to my chambers, where it will be in a locked drawer.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

vs. : 74 Cr. 7

ANTONIO VECIANA and
ARIEL POMARES, :

Defendants. :

----------x

Before:

HON. DUDLEY B. BONSAL,

District Judge

New York, N. Y.
January 8, 1974 - 10 a.m.

APPEARANCES:

PAUL J. CURRAN, United States Attorney
for the Southern District of New York
By: BANCROFT LITTLEFIELD, AUSA

BARRY GARBER, ESQ.,
Attorney for Defendant Veciana

HENRY BOITEL, ESQ.,
Attorney for Defendant Pomares

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(In the robing room. All counsel present.)

THE COURT: The defendants must be arraigned, I take it, because there is a new superceding indictment.

How long do you think this trial will take, Mr. Littlefield?

MR. LITTLEFIELD: Your Honor, there is a pretrial problem which has arisen in connection with the statement of one defendant, and I think whatever happens on that score I will be able to tell you much better. I think the trial should take, the Government's case, one and a half to two days at the outside.

THE COURT: What is the pretrial problem?

MR. GARBER: The question of the usability, or the admissibility of a statement given by the co-defendant. In the event the Government seeks to use that we would move for a severance upon our belief that the maker of the statement would in fact not testify.

MR. BOITEL: The statement being that of my client, your Honor. Your Honor may not recall. but there was a pretrial conference on this, and the prior prosecutor was Mr. Bannigan.

THE COURT: Yes.

MR. BOITEL: My recollection is that the prosecutor in the course of that pretrial conference, Mr.

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Bannigan, made a representation that the statement would not be used period, and therefore there would be no pretrial problems with regard to my client's statement. I have learned for the first time, I believe it was this past Friday or Thursday!

MR. LITTLEFIELD: Whenever it was when we first spoke, when I came into the case.

MR. BOITEL: That towards the end of last week that Mr. Littlefield's understanding was to the contrary.

THE COURT: What are the circumstances of this statement? Whose statement is it and when was it made?

MR. LITTLEFIELD: Very briefly, your Honor, as your Honor is aware, there are three participants that are identified in this case, Barres, who pled before you yesterday, Pomares and Veciana. Barres, after he was arrested in New York, immediately cooperated with the Government and told them the full story, implicating the other two, Pomares and Veciana. Pomares was, a couple of days later, arrested in Puerto Rico and he was advised of his rights and all the rest. He at that time determined that he also would cooperate fully and made a long and complete question and answer statement which was identical to what Mr. Barres had said with

respect to his own role and Mr. Barres's role and Mr. Vecina's role. At that point Barres and Pomares did not have a chance to get together or anything. So there would not appear to be a failure of any warning problem here. Of course the Government is going to use the statement. It is the best piece of evidence we have. It is an extraordinary piece of persuasive evidence.

With respect to the Bruton problem, where Mr. Veciana is mentioned, if Mr. Pomares does not take the stand the Government would propose to read in another person and I, which under the rules of United States vs. Trudo, which is the latest Second Circuit case on this problem, and also Nelson vs. LaFollette, which is the prior Second Circuit case --

THE COURT: You want to redact it, or whatever they say.

MR. LITTLEFIELD: That is correct. Defendants' counsel both have copies of the statement, and I will hand one to your Honor at this point.

MR. GARBER: What is the date of that statement, your Honor?

MR. BOITEL: August 2.

MR. GARBER: This is in San Juan, Puerto Rico?

MR. LITTLEFIELD: Yes. The statement was made

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on July 29. I think the memo might have been typed on the August date.

MR. BOITEL: I see.

MR. GARBER: Your Honor, I don't mean to interrupt, but perhaps I will make this statement to you and your Honor may keep it in mind in reading the statement. Obviously where you have two persons on trial in a conspiracy situation, reference to another person, even though not by name, I think there is only one conclusion that a reasonable man sitting on a jury can draw. I think for that reason we certainly would be entitled to be severed.

MR. LITTLEFIELD: If I may, I would like to suggest -- I have Trudo outside and Nelson outside, the two cases.

THE COURT: How many defendants in those cases?

MR. LITTLEFIELD: It was always a situation where the statement suggested there was someone else..

THE COURT: Were there two defendants on trial or ten?

MR. LITTLEFIELD: I am not certain, your Honor.

THE COURT: Why don't you get the cases.

MR. LITTLEFIELD: Yes, your Honor.

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(Pause.)

THE COURT: Your problem is strictly a Bruton one, I take it?

MR. GARBER: Yes, your Honor.

THE COURT: It is not a question where Pomares was advised of his rights?

MR. GARBER: No, sir. I don't think I have the standing to raise that.

MR. BOITEL: I do.

THE COURT: You have a question about that?

MR. BOITEL: Yes, sir. Proper advice of rights as well as improper inducement.

THE COURT: If you are raising that position, I suppose we ought to have a hearing on it.

When do you plan to use this?

MR. LITTLEFIELD: I suppose I would put Barres on first and then I might use it after that.

THE COURT: Barres would be your first witness?

MR. LITTLEFIELD: I would suspect, your Honor, yes. Certainly Barres would come on before the statement.

THE COURT: I wonder whether the sensible thing to do would not be to go ahead and impanel the jury, and you put Barres on, and then see what time we reach and then perhaps excuse the jury and have a hearing on

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the statement. I would consider both your question and the Bruton question at the same time. That will give us a little chance to look at these cases.

MR. LITTLEFIELD: The problem, your Honor, the severance would then be impossible. I think that a severance may be -- I mean that is what has been requested by Mr. Garber, and the Government is prepared -- that is the problem. I think it may be that if we tried both cases seriatim, I don't think it will take that much longer than trying them all at once. The Pomares case will be very, very quick because the evidence against him is so overwhelming, the Government feels.

THE COURT: In other words, you would consent to a severance of the other fellow?

MR. LITTLEFIELD: If your Honor would not permit me to read the confession in the other person and I.

THE COURT: Since he has raised these questions of whether the fellow had his rights and whether the statement is voluntary, I would have to have a hearing on that. I guess the alternative would be whether we had a hearing now and just held up on the trial, or whether we went ahead and tried the other fellow and then tried him after we have had the hearing.

MR. LITTLEFIELD: That is right.

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MR. GARBER: Your Honor, my problem is, I am scheduled to commence a trial in the Southern District of the United States Court which would be on the 14th, two Mondays in a row.

THE COURT: What court?

MR. GARBER: Southern District of Florida.

THE COURT: Next Monday?

MR. GARBER: Next Monday, the 14th, and also the 21st, one before Judge King and one before Judge Atkins.

THE COURT: Well, if we did this how long would it take to try Veciana?

MR. LITTLEFIELD: It would take maybe a slight amount of time more than to try Pomares, but certainly not a substantial amount of time. It is the same evidence pretty much.

MR. GARBER: There is one other problem, if your Honor would be willing to hear it at this time. There was a superceding indictment returned, I believe, on the 4th, on Friday. I would like to enquire of the Government, or at least have the Court enquire, as to whether in fact testimony was submitted to the grand jury because I understand it was a different grand jury than returned the initial indictment. And I would like

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a determination made in the record as to whether in fact testimony was presented to that grand jury which in fact returned this indictment on the 4th.

THE COURT: I think on that, if you want me to examine the grand jury minutes in camera, I will do that.

MR. GARBER: I would request that.

THE COURT: I don't guess there would be a problem on that.

MR. LITTLEFIELD: I can tell you what happened if you want me to, your Honor, on the record. Mr. Barres had testified before a different grand jury previously on the facts in the existing indictment, and the facts in the superceding indictment were identical except for one or two additional things, which I think with respect to these two overt acts which had been listed in the bill of particulars but which were not overt acts in the original indictment. There was not complete testimony in Mr. Barres's original testimony before the grand jury about where this original meeting took place.

THE COURT: What you are saying is that Barres testified before this present grand jury that handed down the superceding indictment?

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MR. LITTLEFIELD: I am saying I read over his prior testimony to the grand jury after it had been sworn to by the Court Reporter who had taken him down. I asked Barres two additional questions to put in this additional overt act.

MR. GARBER: I would take counsel's representation, certainly. What I understand counsel to be saying is that this grand jury who returned this superceding indictment on the 4th, the only live testimony this grand jury heard was as to those two additional factors. Is that right?

MR. LITTLEFIELD: I would say it was sworn grand jury testimony, so under the rules in this Circuit as I understand them --

THE COURT: That is sufficient. The point is he did come back and testify as to these additional matters and you included two overt acts?

MR. LITTLEFIELD: Yes, your Honor.

MR. GARBER: For the record, I would state an objection to the propriety of those proceedings.

THE COURT: You have that. I think it is adequate, and you have an exception.

MR. BOITEL: I will join in that objection.

THE COURT: All right.

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MR. BOITEL: As to the question of the sequence of events, I would suggest that before Barres takes the stand and testifies, the question of the admissibility of this statement first be determined, because there comes a time for my cross examination of Barres, his role in procuring, to any extent, the defendant, my client, to give this statement to the authorities, will be in issue and I don't want to put it in issue unless in fact the statement is coming in.

THE COURT: I am not quite sure I follow that.

MR. BOITEL: I think there is a possibility here that Barres, to some extent, induced my client to give this statement to the authorities. If he did so induce --

THE COURT: So what?

MR. BOITEL: If the statement is not coming in, then I don't want to cross examine Barres about it and his role in procuring my client to give it.

THE COURT: I don't think you need to worry about that. If we go ahead and then the statement comes in and you want to recall Barres for any reason, I don't see why it can't be done. I think that would be a much better way to do it. You would have Barres available.

MR. LITTLEFIELD: Yes, he will be available.

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THE COURT: All right.

MR. LITTLEFIELD: So really the threshold question is the question where we read in another person where it says Veciana, or where we consent to the motion for a severance, I guess. Is that it?

THE COURT: That's really what it amounts to, I think.

MR. LITTLEFIELD: Assuming that the warnings were properly given.

THE COURT: Yes.

MR. GARBER: Of course the warning issue is really unrelated to my position.

MR. LITTLEFIELD: That is right.

THE COURT: If we start it off with Pomares and got through Pomares, that won't take too long, would it? A couple of days?

MR. LITTLEFIELD: Yes.

THE COURT: Your fear is that if we start the trial with both of them it would be too late for a severance unless the defendant waives any double jeopardy?

MR. LITTLEFIELD: That is right, your Honor. Also I think that it is prejudicial to the Government to have one defendant, for a reason unknown to them, just

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vanish in the middle of a case. I think it is not an efficient or proper way of doing it.

THE COURT: That works both ways.

What do you feel about that?

MR. GARBER: I feel that I don't think I can properly waive any double jeopardy right. I would like to confer with my client about that.

THE COURT: You would be entitled to do that. I don't think there is any prejudice to the Government if there is a severance during the trial. I think it sort of works the other way. The jury does not know the reason at all. I would say this defendant is no longer before them and they are to draw no inferences one way or the other.

MR. LITTLEFIELD: In terms of the neatness of the trial, they have extra openings. Barres's testimony will obviously be more extensive if we have both defendants rather than one. He won't have to go through the long relationship with Veciana if it is only Pomares.

THE COURT: Well, why isn't the sensible thing, and I don't think it is going to delay it too much, to have the hearing first and you can raise your problems, Mr. Boitel, and I can consider both your problems and the Bruton problem at the same time. Would that make

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sense?

MR. GARBER: Yes, sir.

MR. LITTLEFIELD: I have one problem. There are two witnesses that I think would be required for this hearing. One of them is in New York and ready to testify because I have him here ready to go, because he was going to be one of my first witnesses after Barres. The other one is the agent from Puerto Rico, and he was planning on arriving the end of the day today, because normally I would not have used him for a couple of days, and I didn't want to have him sitting around. I didn't really count on having to call him this morning for the purpose of this hearing. So he is not here, the witness from Puerto Rico.

MR. GARBER: Is there testimony corroborative of each other?

MR. LITTLEFIELD: That is up to Mr. Boitel. Mr. Pinol is the one who spoke Spanish to Mr. Pomares. Mr. Bruno is the American police officer, the undercover agent who went down and was present while this statement was taken. I suppose what we could do is call Bruno and he will tell more or less what he knows happened. The statement on its face is fairly explanatory of what happened and, Judge, perhaps you can make a tentative

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ruling, and Pinol will get here tomorrow.

MR. GARBER: That would be fine.

MR. BOITEL: My client was under the impression that there may have been a tape recording made of this.

MR. LITTLEFIELD: I would have to check. I was not told there was.

THE COURT: Would the witness you have here know that?

MR. LITTLEFIELD: I suspect he would. I am not certain, though.

MR. BOITEL: Your Honor is permitting the Government to utilize this statement over its prior representation, as I understand it, that it was not going to use it. Is that correct?

THE COURT: I don't know about the record because I have so many of these things, I don't think that is a fact.

MR. BOITEL: I did ask the reporters -- the record was placed under seal and it was not to be transcribed, but I did notify the Court reporters downstairs in case an issue should arise they should have it ready, but have the reporter ready to read that portion of that minutes for the Court's benefit.

MR. LITTLEFIELD: So the record is clear I have

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conferred with Mr. Bannigan and he said he never remembers, and would have been out of his head to suggest we were not going to use this confession.

THE COURT: All right. I think we had better go ahead and have the hearing then, and hold the jury. I think before we do that we had better arraign the defendants on the superceding indictment.

MR. LITTLEFIELD: Might I suggest this: we go ahead with the trial against Pomares, assuming that is what we are going to do, and have the hearing tomorrow morning when both witnesses are going to be here, under the likelihood that your Honor can rule either way at that point, but it seems to me --

THE COURT: You would go along with severing Veciana?

MR. LITTLEFIELD: I don't see that we have much choice on that, your Honor, at this point.

Your Honor's thought would be to ponder the another person question?

THE COURT: No. My suggestion was that we have the hearing today and if I rule in the Government's favor on the hearing, then we can go ahead with the trial of both of them as soon as the hearing is over.

MR. LITTLEFIELD: But then what about the

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problem of another person and I?

THE COURT: Well, that will give me a chance to look at these cases. We have to have the hearing because Mr. Boitel has raised a point as to whether the confession was a voluntary one, and I think he is entitled to a hearing on that.

MR. LITTLEFIELD: The problem is, your Honor, if we are not going to be able to decide the question of another person and I in advance of the trial, the Government would consent to the motion for severance.

MR. BOITEL: I don't think the Judge is saying that. He is saying let's have the hearing now.

THE COURT: Let's have the hearing, and that won't involve the question of severance. If you want to consent to a severance after the hearing we can do it.

MR. GARBER: The only thing I would ask your H.nor to consider on my behalf, at least, is the schedule that I have. If in fact the Pomares case goes forward, it looks like we probably could not conclude the Veciana case this week.

THE COURT: Well, I would like to think about that. I may talk to your Florida Judge, because you are here, and maybe we should get it over with.

MR. GARBER: I hoped to be back with the family.

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THE COURT: That is a problem. Let's see how we go along. Why don't we arraign the defendants and then we will have this hearing on this statement, and on the basis of the hearing then I will consider the admissibility of the confession and consider the Bruton problem.

MR. GARBER: I would like to discuss the possibility of a waiver of that question with my client.

THE COURT: All right.

MR. LITTLEFIELD: Your Honor, may I be given a few minutes to go and find this man? I assume he has arrived, and to confer with him and tell him what is happening.

THE COURT: I would like to arraign the defendants who are here, and let's get that over with. Then we will declare a recess and when you fellows are ready to proceed we will proceed.

MR. GARBER: In view of my position regarding the superceding indictment I would advise your Honor that at the arraignment we will stand mute and have the Court enter a plea for him. I don't want anything to constitute a waiver of that question.

THE COURT: I don't think it does. Why would it constitute a waiver? I don't see why it would. Just

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the m[illegible]fact I have called this case in for trial, supposing it came up in the ordinary course for last week on Friday, he would have been arraigned here in Part I. I don't see there is any waiver. I think I would rather have the defendant plead not guilty. I think it would be better.

MR. BOITEL: On the question of whether the Government has waived its right to use this statement, shall I have the Court Reporter come up with the minutes of the pretrial conference?

THE COURT: Let's have the hearing. If I should decide he can't use it anyway it won't make any difference. That could be done at a later time. I think the first thing is we have to hear it.

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(In open court. Jury not present.)

THE CLERK: United States of America against Antonio Veciana and Ariel Pomares.

MR. LITTLEFIELD: The Government is ready, your Honor.

THE COURT: This is for the arraignment of the defendants.

Are the defendants ready for arraignment?

MR. BOITEL: Yes, your H'nor.

MR. GARBER: Yes, your Honor.

THE COURT: Have the defendants been informed of this indictment, 74 Cr 7?

MR. BOITEL: Your Honor, may I interrupt a moment? The defendants, particularly my client in any event, does not speak English fluently. In fact, his command of English is rather poor. I understood the obligation was on us to get an interpreter for these proceedings and we have done so. She is here in the courtroom.

THE COURT: Come forward and swear in the interpreter, please.

(Norma Seltzer was sworn as the Spanish interpreter by the Clerk of the Court.)

THE COURT: Norma Seltzer, is that correct?

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THE INTERPRETER: Yes, your Honor.

THE COURT: Would you inform Mr. Pomares that there has been an indictment, 74 Criminal 7, handed down by the grand jury naming him as a defendant.

Tell him that this is the time for arraignment when he will be asked to plead guilty or not guilty. I would like to know whether Mr. Veciana and Mr. Pomares have had an opportunity to consult with counsel regarding the indictment.

MR. GARBER: On behalf of Mr. Veciana, when we became advised of it, and we have spoken about it.

MR. BOITEL: I have similarly advised my client, your Honor.

THE COURT: All right. Do the defendants waive the reading of the indictment?

MR. BOITEL: Yes, sir, my client does.

MR. GARBER: Mr. Veciana does also, your Honor.

THE COURT: All right.

Mr. Veciana, how do you plead?

MR. GARBER: We enter a plea of not guilty to all charges.

THE COURT: How does Mr. Pomares plead?

MR. BOITEL: He pleads not guilty, your Honor.

THE COURT: All right.

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Madame Interpreter, would you so advise Mr. Pomares and ask him if he understood this?

THE INTERPRETER: Yes, he understands, your Honor.

THE COURT: He understands, all right. Then I think following up my conversation with counsel, we will recess at this point and proceed with the hearing as soon as we reconvene.

THE CLERK: The same bail conditions as were on the former indictment?

THE COURT: Any application regarding bail?

MR. LITTLEFIELD: No, your Honor. Bail can be continued.

THE COURT: Bail is continued.

(Recess)

(In the robing room)

THE COURT: What is the story, Mr. Littlefield? I interrupted another trial to take this on this morning. Have you got your witness?

MR. LITTLEFIELD: Mr. Bruno is not here yet. They say he is going to be right here. He was in the street and they got word to him and he is on his way as fast as he can get here.

THE COURT: He was alerted, wasn't he?

MR. LITTLEFIELD: He was alerted that there was a trial, but I didn't know there was going to be a suppression hearing this morning, so I didn't know I had to call him. If I had known I would have had all the witnesses.

THE COURT: We discussed earlier this morning, and Mr. Boitel raised the point that he thought that at the pretrial hearing the Government said they were not going to use this statement, and my law clerk's notes said that was so. I got the reporter here and he is going to read us that part of that. This is a different reporter,but he is going to read us that part of the minutes.

Would you proceed, then.

THE REPORTER: Yes, your Honor. This is by Mr. Rosner:

"There is another matter that obviously Mr. Bannigan and I discussed, and he has to make a decision on, and that is a potential severance problem under Bruton, since one of the defendants did give a statement and the other one did not.

"MR. BANNIGAN: I can resolve that right now. We will not use the statement.

"THE COURT: You will not use the statement.

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Then there is no problem under Bruton."

THE COURT: That is it.

MR. LITTLEFIELD: I don't know what that means because Mr. Bannigan is so clear, that he did not mean that he was not going to use this statement against Pomares.

THE COURT: He said there would be no Bruton problem. This is set down on the trial for the two defendants. I think we had better go ahead without the statement. I think the record is pretty clear, and I think the Government having made its decision at one point, I am not going to let them reverse at trial. I think we had better go ahead and not use the statement.

MR. LITTLEFIELD: May I suggest one other possibility, your Honor, which is that the Government will consent to the motion -- that I don't believe the Government waives its right to use the statement under the circumstances. However, if I could just try to make my position, I understand that it is troublesome. I think what this would do is excuse the failure to make the suppression motion until today, and I have no objection to that.

THE COURT: At pretrial conference, the Government agreed to go ahead and try these two defendants

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and fix the date for trial. And when it was asked about the Bruton problem, they said there wasn't going to be any Bruton problem because the Government was not going to use the statement. So why do we reverse the field? I think I will stick to that.

MR. LITTLEFIELD: May I consult with Mr. Bannigan so he can talk to your Honor about this one point?

THE COURT: We are wasting time. We will impanel the jury and start the trial.

MR. LITTLEFIELD: May I have five minutes to talk to Mr. Bannigan and bring him up here?

THE COURT: What is the point?

MR. LITTLEFIELD: The case was reassigned to me a week or so ago. I called your Honor's chambers and said I would do everything I could to get the case ready. Mr. Bannigan has another trial. Mr. Garber asked if we could adjourn it. I then joined in that motion for an adjournment. There is no adjournment and we are ready to go. It seems to me clear that this is a complete corroboration of our witness.

THE COURT: I don't care about that. Of course it is. The Government can't blow hot and cold on this. The Government made a commitment to the defendants'

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lawyers at this conference, and I am going to make the Government stick with it.

MR. LITTLEFIELD: As soon as I was in the case I informed both of them I intended to use the statement.

THE COURT: You may have, but I am going to stick to that. I think the Government has got to adhere to a position, and I think we will just go ahead and try the case.

MR. LITTLEFIELD: May I at least call Mr. Bannigan so I may talk to him?

THE COURT: You may. You can tell him that is what my decision is.

MR. LITTLEFIELD: May I use the phone outside?

THE COURT: Yes.

That would mean we won't have the hearing, and we will go ahead and impanel the jury.

All right, gentlemen, we can proceed on that basis.

(Recess)

(In the robing room)

MR. LITTLEFIELD: Mr. Bannigan is on his way up. If your Honor is adhering to the ruling that we can't use the statement at this trial, the Government would move to sever the two defendants and try Romares

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first. If Pomares was convicted, the Government would grant him immunity and proceed against Mr. Veciana. The Government is to proceed without the statement in this trial, is enormously prejudicial, and therefore the Government moves --

THE COURT: What do you mean, it is prejudicial?

MR. LITTLEFIELD: Prejudicial to the Government because it is a basic part of the case.

THE COURT: The Government said it did not want to use it.

MR. LITTLEFIELD: Mr. Bannigan will explain the context of that is not on its face what it appears to be. I don't want to dispute your Honor's rule on that.

THE COURT: I think you fellows bother me very much. I have got the jury panel coming up.

MR. LITTLEFIELD: I understand that.

In view of that the Government would move to try Romares first under -- would move to sever them to try Pomares first and try Veciana immediately after that.

MR. GARBER: I strenuously object to that proceeding. We are named jointly and we are prepared to defend jointly.

THE COURT: We will go ahead and proceed to

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try them jointly, and your motion is denied.

MR. LITTLEFIELD: Thank you, your Honor.

MR. GARBER: Thank you, your Honor.

(Recess)

(In the robing room)

THE COURT: While we are waiting for the panel, gentlemen, there are two things I want to bring up. First the challenges of the two defendants, have you gentlemen got any views on challenge?

MR. GARBER: No, your Honor.

MR. BOITEL: No, your Honor.

THE COURT: I will allow you two extra challenges exercised jointly. That means on the first round you would have three.

MR. LITTLEFIELD: Would the Government, in keeping the percentage the same, go up one more challenge as well?

THE COURT: The Government will go up. If there are any problems I want either side, where somebody feels there is a strong reason, I will discuss it with you at side bar.

As to alternates, I thought two would be enough. What do you think?

MR. LITTLEFIELD: Fine, your Honor.

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MR. GARBER: Fine, your Honor.

MR. LITTLEFIELD: Mr. Bannigan is here, and he wants you to hear his view on what he said at that time.

MR. BANNIGAN: I have no specific recollection of really what was said. Mr. Littlefield has told me that I stated that there was a Bruton problem with the confession or the statement, and that there would be no problem with respect to that.

MR. LITTLEFIELD: There would be no Bruton problem.

MR. BANNIGAN: There would be no problem.

THE COURT: Because you were not going to use the statement.

MR. BANNIGAN: What I meant was that because of the Bruton problem the statement would not be used against Mr. Veciana, and it would be redacted.

THE COURT: I think the clear import of what the minutes said was that there was no problem because the Government wasn't going to use the statement.

MR. BANNIGAN: If I said that I shouldn't have.

THE COURT: Well, it is too bad but that is what the record says, and that is the reason that I have decided that you have to go ahead with the trial and go

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ahead without the statement.

MR. LITTLEFIELD: Certainly.

THE COURT: However, if Mr. Pomares takes the stand the Government can use the statement. I am not precluding you on any cross examination.

MR. LITTLEFIELD: You are precluding at this point it being used on the Government's case.

THE COURT: Right.

That is all I have. Anybody else have anything before we pick the jury?

MR. GARBER: No, your Honor.

THE COURT: All right, thank you.

MR. BOITEL: On your questions to the jurors, I assume since the defendants do not speak English, and since they are of Cuban origin, you may be directing some questions to the jurors on people who don't speak English --

THE COURT: I usually do not. I think the jury is fair whether the defendants can speak English or not.

MR. BOITEL: I don't feel strongly one way or the other, your Honor.

THE COURT: All right.

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Let's proceed and bring the jury in.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen. The first stage of the trial is the openings of the lawyers. This is their opportunity to address you and to indicate to you what the case is all about, and what they think the evidence in this case may show. But please remember, as I told you before lunch, that the evidence in this case is what you hear from that witness stand, and any exhibits which may be received during the trial. What the lawyers say is not evidence, what I say is not evidence. What you hear on the witness stand and the exhibits is evidence. It is helpful to give the lawyers an opportunity, if they desire, to make an opening statement to you.

With that, you may proceed, Mr. Littlefield.

MR. LITTLEFIELD: May I introduce Detective Bruno, your Honor, who will be sitting with me.

THE COURT: You are a detective from where?

MR. BRUNO: Organized Crime Bureau, Special Services Division, Drug Enforcement Task Force.

MR. GARBER: Your Honor --

THE COURT: He has introduced Detective Bruno. Go ahead.

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MR. GARBER: That was not the thrust of my objection, your Honor. My objection was to the use of certain terminology which was presented by this witness in describing his activities.

THE COURT: You have an exception to that. Let's go along.

MR. LITTLEFIELD: May it please the Court, counsel for the defendants, Madame Forelady, ladies and gentlemen of the jury, as you know, my name is Nick Littlefield. I am Assistant United States Attorney. That means I am a Federal prosecutor and I have the privilege of representing the United States Government in this case.

Now, the charge in this case, which is a criminal case, as the Judge has already instructed you, is contained in the indictment. The charge is the charge on which you will be charged to make a verdict at the end of the trial is that these two defendants, here on trial, Antonio Veciana, sitting here, and Ariel Pomares sitting next to counsel, Mr. Boitel, together with the co-conspirator, Augustir Barres, combined, conspired and confederated and agreed together to violate certain Federal laws.

Basically what that language means is that they

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conspired together to violate certain Federal laws. The Federal laws which they are charged with having conspired to violate are the Federal narcotics laws.

Now, in addition the indictment charges that in pursuance of this conspiracy, to advance this conspiracy, certain specific steps were taken, certain, what they call or what we in legal terminology call, overt acts. They are listed in the indictment. And at the end of the trial the Court will explain the significance of overt acts to you, but I wanted to bring to your attention that there are six overt acts specified, and they cover a series of events involving a narcotics transaction,of which you will hear testimony during this case.

Suffice it to say that you will find that one of these overt acts was committed by one of the co-conspirators to advance the conspiracy, to advance the conspiracy, to find these defendants guilty.

The second count, which is count two, is what we call a substantive count. That means -- that is more legal terminology. What it means is that the first count is the conspiracy. That is the agreement to do the unlawful acts. The second count is the actual doing, the committing of an unlawful act. That refers

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specifically to these two defendants distributing and possessing with intent to distribute a schedule 2 narcotic drug controlled substance. Schedule 2, the Court will inform you, includes cocaine, which, as the Court has already told you, is what the substance of this case is. A schedule 2 narcotic controlled substance, to wit, approximately 7 kilograms of cocaine hydrochloride. One kilogram is a thousand grams --

THE COURT: Let's not worry about that now.

MR. LITTLEFIELD: I just want to explain it in pounds.

THE COURT: I know.

MR. LITTLEFIELD: May I explain it in pounds?

THE COURT: No. Say 7 kilograms. We will wait and hear the evidence on that.

MR. LITTLEFIELD: Those are the 2 counts, counts one and two. Those are the counts which you will be charged to render a verdict at the end of the trial on.

Now, as you know, and as the Judge has already told you, it is your function to decide the facts of this case. You are the fact finders, no one else. The purpose of this opening is to give you a road map, to give you a picture of what the entire evidence will show so that you will be able to follow it as it comes in

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from the witness stand, because the evidence that you will make your finding on is the evidence that comes from the mouths of the witnesses, from certain exhibits which will be introduced into evidence, physical exhibits, and certain agreements, if there are any, which we call stipulations. That is the total of the evidence upon which you must make your finding.

Now, I want to give you sort of a road map so that you can piece this evidence together as it comes in. Because, remember, it can't come all at once. We put one witness on and he goes from beginning to end. Another witness comes in and he overlaps. The pieces have to fit together, and what the purpose of my opening is is to explain to you what that evidence will show.

Two final words before I review the evidence. TheCourt has also told you that the defendants will have Spanish interpreters, and some of the witnesses will also have Spanish interpreters, so you will have to bear with us. I will ask a question and the question will be translated into Spanish to the witness. The witness will then answer in Spanish and the interpreter will interpret back in English. I will take twice as long. Please bear with us on that.

Secondly, in some cases the Government might

have what we call circumstantial evidence, which would mean, for instance, agents had seen people coming in and out of meetings. From that you would then be asked to infer that because of these events that happened --

THE COURT: You don't need to worry about that. I will instruct them on circumstantial evidence. I will take care of that.

MR. LITTLEFIELD: In this case, however, we have the best possible evidence. We have a witness on the inside, a witness who was in the room who can tell you what happened. That will be Mr. Barres, who, as I told you, is a co-conspirator. As he will tell you from the witness stand, he has pled guilty to this conspiracy count already. So that this is, the Government submits, the inside evidence, the best evidence to find out exactly what went on inside these rooms, inside these meetings.

Other witnesses will be agents who observed people coming and going and certain other evidence as well. But the basic evidence will be the inside evidence.

Now, briefly let me just describe to you what the facts will show. The cast of characters that you will concern yourself with involve first the two defendants and the co-conspirator, Mr. Veciana, who is

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a Cuban, who left Cuba, and then came to live in Miami. Mr. Pomares, who was a Cuban also, who left Cuba as well and lives in Puerto Rico. Mr. Barres, the third member that I mentioned here, the third name, also a Cuban who left Cuba and went to Puerto Rico. Mr. Barres and Mr. Pomares worked together in various of Mr. Barres's businesses, and you will hear that. Mr. Pomares worked with Mr. Barres. Mr. Veciana was an acquaintance of Mr. Barres and someone who Mr. Barres had a number of business ventures with, Mr. Veciana.

What happened is that Mr. Veciana was employed in Bolivia. On one occasion, he and Mr. Barres had had a business failure, they had lost some money. They were both hard up for cash. So what happened is that Mr. Veciana told Mr. Barres, and Mr. Barres and Mr. Veciana had this conversation, that Mr. Veciana --

THE COURT: They will say what happened. Just tell them this is what you hope to establish.

MR. LITTLEFIELD: Of course, your HMnor. Mr. Veciana and Mr. Barres had a conversation -- this is what the Government hopes to establish and what the witnesses, the Government hopes, will convince you of -- had a meeting at which Mr. Veciana said that he could bring cocaine up, he could have cocaine brought up from Bolivia,

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from South America, into the United States. This was in the end of 1971. Mr. Veciana and Mr. Barres discussed how would they be able to sell this cocaine in the United States. Mr. Barres turned to Mr. Pomares, who is another business associate of his, and Mr. Pomares said that he thought he knew someone who would be able to sell the cocaine in the United States. So with these three men working together, what happened is that in 1972 Mr. Veciana went to Bolivia and purchased 5 kilograms of cocaine. He then gave it, according to the testimony that you will hear, he gave it to a courier of some sort, a diplomatic courier of some sort in Bolivia, who brought it into Miami. In Miami these 5 kilograms were delivered by Mr. Veciana to Mr. Pomares and Mr. Barres, and Mr. Pomares then took it off to this connection he had and he sold it. It was sold. That was the first transaction, 5 kilograms.

The first one was a success, they plow the money back in. Veciana goes back down to Bolivia, according to the evidence, he goes back down to Bolivia. This time contracts to buy 12 kilos of cocaine. Again the cocaine is given to the diplomatic courier of some sort. This time it is put on a ship, because the diplomatic courier is sending furniture up to this

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country. It is put on a ship and it is in the furniture somewhere, and it ends up in New York and then the diplomat flies to New York to meet the ship and brings it down to Mr. Veciana in Miami, in the Miami area. This time instead of the 12 kilos they only had 10 kilos that came through. So we have 10 kilograms this time. Once again, this is sold through the same contact, the same connection which Mr. Pomares had for the first 5. The connection, Mr. Barres will tell you, he does not know who it is except it was something that Mr. Pomares referred to as The Midget. I don't know that he will tell you that he was a midget, but he was a short man apparently. That is the second sale, 10 kilograms. This time they had problems with The Midget. The Midget, according to the evidence, had a drinking problem of some sort. He wasn't a very effective seller. He sold most of it and not all of it. They got concerned, they had problems, it wasn't working well. They decided to continue.

Now we are into 1973, the third shipment, the facts of the third shipment become important. The third shipment again is of 10 kilograms. Veciana goes back down to Bolivia, gets the cocaine in Bolivia, gives it to the diplomat, a new diplomat this time because the old diplomat had gone to Spain, been assigned somewhere

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else. The new diplomat brings the cocaine into the United States, arrives in Miami in July of 1972 -- excuse me, July of 1973, this year. Meanwhile, of course, Pomares and Barres are concerned because their first buyers, the buyer, The Midget connection that they had for the 5 kilos and 10 kilos, is not working very well.

So what do they do? Barres, from earlier times, has a person in New York who he things is a gangster. So he comes up to meet with the gangster and the gangster says, yes, he can probably find someone to buy the cocaine. Eventually the gangster introduces the person -- the person whom Barres thinks is a gangster, introduces Barres to an undercover agent, and an undercover agent is a Federal or City officer, City Agent who wears plain clothes and goes out in the community to attempt to make purchases of narcotics. They don't know that he is a Federal agent or a City agent or whatever.

In any event, the cocaine arrives in Miami aro around the middle of July, specifically you will hear testimony that it arrives the week between the 16th and the 21st. The 21st of July is a Saturday. On that day, the 21st of July, Pomares flies into Miami and Pomares, Veciana and Barres meet at an apartment rented by Pomares

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in Miami at the International Airport Village, the Miami International Airport Village. They meet there and they discuss the fact they have the cocaine and they have to get it to New York, so Barres can sell it. It is transferred by Veciana, who gets it from the diplomat, transferred by Veciana to Romares in the parking lot of one of these motels where they are staying down there. It is transferred in two shopping bags. The shopping bags are put in the trunk of Pomares's car. Pomares then goes to meet again with Barres in this apartment at the IUternation Airport Village. In that apartment Pomares and Barres put the cocaine from the two big ones into smaller bags of 1 kilogram each. They weight it on scales which they have down there, and they put the kilograms in 10 bags of 1 each and they wrap it with masking tape. They put 7 of those bags into a suitcase, the suitcase right here (indicating). The suitcase is then closed with 7 of those kilos in it. The other 3 kilos are hidden in sort of a secret safe, you might say, in this apartment, because only 7 kilos are going to be bought right now by the man in New York. 3 kilos are kept in a little safe behind a stove. It is not a safe, but it is behind a wooden thing with Philips screw behind a stove where they keep it, with the scales.

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That day, the 21st, Pomares -- excuse me, the 21st is the date they put the stuff in the bags. The 22nd pomares gets on an Amtrack train, 9 o'clock train, comes to New York, carrying a suitcase. Barres flies up ahead. The two of them meet at the Americana Hotel in New York where Pomares checks in. Pomares is told to take the suitcase, the cocaine to the hotel Taft, which is where Barres is staying, two rooms Barres has rented. The cocaine goes into one of the two rooms, not the room Barres is staying in but the other room next door. Barres then has the appointment to meet with the undercover agent. The undercover agent -- they negotiate for the sale to take place. The undercover has taken out that morning $164,000 for the 7 kilograms. He has the money available. He goes there. The undercover agent tests the cocaine in each of the 7 bags, he finds it is good. At that point the undercover agent gives a signal and all the other police officers, Federal agents who were outside the hotel at the Hotel Taft, come bursting into the room. They arrest Barres. They make a mock arrest on the undercover agent and they seize the cocaine. That night Barres agrees to cooperate and to tell the Government what happened.

Now, that in a nutshell, and there will be

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many more details throughout, but that in a nutshell is the full length of the road map that you will hear evidence about. That is the evidence, and the evidence which you hear from the witness stand plus any stipulations, plus the physical evidence which at the end of the case I will again have the opportunity to stand up and to address you and to tell you or give you my view of what the evidence itself has shown for your consideration.

At that point the Government contends that you will have facts to find beyond a reasonable doubt that Mr. Veciana and Mr. Pomares are guilty as charged of conspiring to sell and distribute cocaine, and specifically of being distributors of 7 kilograms of cocaine at the Hotel Taft, July 23, 1973.

Thank you.

THE COURT: Mr. Garber, would you like to open?

MR. BOITEL: May we approach the side bar, your Honor?

THE COURT: Yes.

(At the side bar)

MR. BOITEL: I respectfully move for a mistrial based on the Prosecutor's comments in his opening concerning two transactions which seem to be utterly foreign to anything that is charged in this indictment,

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two very substantial narcotics transactions. There is only the last transaction that I can see in any way reflected in this indictment.

THE COURT: Well, the conspiracy runs from November 1972. What about that?

MR. LITTLEFIELD: I have some events before.

THE COURT: Why did you talk about those?

MR. LITTLEFIELD: Because those events are under United States versus Costello which shows how the things began.

THE COURT: You have an exception.

MR. BOITEL: I do. I note particularly for the record this is an indictment that came down just in the last couple of days. It is not something that we have evidence that has developed here since the indictment came down.

MR. LITTLEFIELD: May I --

THE COURT: I will give you an exception on it. We will go ahead. I don't think it was necessary anyway myself.

MR. GARBER: Specifically to amplify the objection I earlier made, my objection specifically, your Honor, was Mr. Bruno identifying himself as a member of the organized crime department of his division.

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THE COURT: You have an exception on that, too.

I don't know why we go thrcugh all that. Why did you have to introduce him?

MR. LITTLEFIELD: I didn't know he was going to say that.

THE COURT: Why did you have to bother anyway. Let's go ahead.

MR. LITTLEFIELD: Because he was going to be sitting there. Somebody might have known.

THE COURT: All right.

(In open court)

THE COURT: You waive an opening statement, Mr. Garber?

MR. GARBER: Yes.

THE COURT: You have a right and privilege to do that.

How about you, Mr. Boitel?

MR. BOITEL: Just a few words.

MR. BOITEL: May it please the Court, Mr. Littlefield, ladies and gentlemen of the jury: I do only have a few words to say. Hopefully toward the end of this case I will have a lot more to say. I would like to remind you of a few things before we start this

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trial here. First of all, I think you probably well realize as my client sits here, and I do only represent one person in this case, Mr. Ariel Pomares. As he sits there he is clothed with a presumption of innocense. A legal principle that is basic to criminal justice in this country, is clothed with the presumption of innocence. The fact an indictment was returned against him means absolutely nothing from this point on. It is merely a piece of paper. Perhaps some of you,in a civil suit there is a piece of paper that starts the suit, a complaint --

THE COURT: Let's not get into civil suits. I told the jury that the indictment was merely the charge, the way the defendant was brought into court. I told them that this morning.

MR. BOITEL: In any event, it has no weight.

Secondly, you know if we took a portrait, a picture, and we cut it up into a dozen pieces and I distributed one piece to each of you, no one of you would be able to know what that portrait really depicted. You would only have a small piece of it. Any trial is just like that. You are going to get, as Mr. Littlefield indicated, you are going to get this evidence in dribs and drabs throughout the trial. Please do not make any

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determination in your own minds, don't pass judgment on anyone in this case until you have the full picture. It is a basic human fault. It is one I suffer from as well as you do, that sometimes we come to snap conclusions, hasty conclusions. Well, in the context of a criminal case you just can't do that and be fair to all sides.

So I ask you to reserve your decision in that respect.

There is going to be, apparently from Mr. Littlefield's opening, one witness who will present you with "the best evidence," as Mr. Littlefield said, somebody on the inside allegedly, this man by the name of Mr. Barres. I think at the end of the trial you are going to have to make a determination how much weight would you place on the testimony of Augustin Barres? Would you rely on anything he told you in something that was important to your own lives?

If you would not rely on that gentleman's testimony in anything that was important in your live, how can you possibly rely on it in passing judgment on the life of someone else?

I believe that is about all I can say at this point, since we don't have the evidence, and I will be addressing you again at the end of the case. Thank you.

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THE COURT: Proceed, Mr. Littlefield.

MR. LITTLEFIELD: The Government's first witness, your Honor, is Mr. Barres.

A U G U S T I N B A R R E S , called as a witness on behalf of the Government, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LITTLEFIELD:

Q Mr. Barres, I moved this rostrum to the back of the jury box so that you will speak loud and clear so that I can hear you and presumably if I can hear you, they can hear you in the furthest corner in the jury box and in the whole courtroom.

Now, your name is Augustin Barres. Is that correct?

A Yes, sir.

Q A-U-G-U-S-T-I-N , B-A-R-R-E-S.

A Yes.

Q Hou old are you, Mr. Barres?

A Thirty-eight.

Q Thirty-eight?

A Yes.

Q Where were you born?

A I was born in Cienfuegos, Cuba.

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Q And did you go to school in Cuba?

A I went to the school in Cuba and Military Academy in Columbia, Tennessee.

Q Did you graduate from the school in Tennessee?

A No, my father died in 1951 and I have to go back to Cuba.

Q What did you do when you went back?

A I went to the Professional School of Commerce.

Q You have to go very slowly, because with the accent problem we are going to have a problem.

A I went to the Professional School of Commerce in my home town. At the same time I was study civil administration carrier in the University of Havana.

Q And did you, during the period of the 50's have jobs in Cuba?

A Yes. I work in a construction company building a tunnel in my home town.

Q And then did you have other jobs after that, in Cuba?

A In Cuba, from 1956 to 1959 I started in that company as an accounts payable clerk, and I became their office manager.

Q What company was that?

A Company's name, Tecon Corporation, from Dallas,

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Texas. It belongs to the Murchison family.

Q Did you work for other companies at that time while you were still in Cuba, or did you have other jobs in Cuba?

A In 1959 I went to work with the Government. I was tax collector for the City of Cienfuegos, and I was for one year as a General Manager of the Public Health Department in Havana.

THE COURT: Which department?

THE WITNESS: Public Health Department.

Q What was your job with the Public Health?

A I was in charge of all the administration of supplies to hospitals and the cleaning of all the streets in Cuba, the different cities. All matters pertaining to health, the supply of all the materials used, plus payrolls, employees and that type of thing.

Then in June 1960 through September 1960 I was Assistant Secretary of Communication.

Q That was in Cuba?

A Yes.

Q Where was your office then?

A In Havana. Then I resigned.

Q And what happened?

A Well, on January 8, thirteen years ago, I

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arrived to this country.

Q January what?

A January 8 of 1961, I arrived to this country.

Q And you left Cuba. Is that right?

A Yes, sir.

Q And --

A I went to work for a construction company in Puerto Rico. The name of the company is R.P. Farnsworth and Co.

THE COURT: R. P. Farnsworth and Co.?

THE WITNESS: Yes.

Q When you left Cuba, as you say, in January or January 8, 1961, where did you go then?

A I went to Miami for three days. Then I went to Puerto Rico.

Q You settled in Puerto Rico?

A Yes.

Q At some point, or sometime thereafter did your wife and child or children join you?

A Yes, about a month and a half later they came from Cuba.

Q Did you leave Cuba because you had a dispute with the Castro Government or anything, or why did you leave?

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A I left Cuba because I was looking that he had changed completely from being a democracy, he was trying to establish a communist system which it was never the intention of the revolution against Batista.

Q So you left Cuba. Did you tell the Government you were leaving or not?

A No.

Q No?

A I did not. I filed an application -- my mother at that time had a hotel and --

Q I am sorry, I did not hear that.

A My mother at that time was the owner of a hotel in my home town, and I requested -- I filed documents saying I was an employee of the hotel and I was trying to leave Cuba.

Q You did leave?

A Through the bureaucratic papers they gave me the permission to go out.

Q And then thereafter your wife joined you. Is that right?

A Yes, sir.

Q And you live in Puerto Rico?

A Yes, since 1961.

Q What was your job then for R. P. Farnsworth

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when you got to Puerto Rico?

A In R. P. Farnsworth, I was their office manager. We were building over there the stadium, we built the Sheraton Hotel, the Sears Roebuck Building, the Aracibo Radar, which happens to still be the largest in the world, and several public housing projects. Then in 1964 they changed me from office manager to general sales manager of the company because we went into the sale of houses.

Q And you continued as the general manager of Farnsworth?

A General manager of the sales department.

Q In Puerto Rico still?

A Yes, till 1967 in June, when I resigned.

Q From Farnsworth?

A Yes.

Q What did you do at that point?

A Well, while I was working with Farnsworth I had obtained the distribution of some construction products and I was selling them from the garage of my house. Then I had one salesman going out and I keep growing to better. So I decided to quit. Also I was selling FHA mortgage. I was a mortgage groker.

Q So did these jobs involve trips to the United

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States?

A Starting in 1967 I start traveling to United States.

Q Where did you go in the United States?

A Well, here to New York most of the time, until 1971 that I also went to Miami, Florida.

Q And what did you do when you went to Miami, Florida, what were your business purposes there?

A After I divorce in March 1971 and had been invited by Mr. Lopez to a piece of land that they were selling for 24 units next to the airport, and I went to see the place and I like it, and we gave the down payment of that 24-units in Miami. I went into real estate.

Q Real estate development in the Miami area?

A Yes.

Q Did you have a name for the company that you sold automotive supplies from Puerto Rico?

A The name of the company, Freca, Importers.

Q And what was your title at Freca?

A Well, I was president.

Q You were president?

A Yes.

Q Now, do you know Antonio Veciana?

A Yes.

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Q And how long have you known him? When did you first meet him?

A I knew about him since 1963, tut we became friends in around 1970, I guess.

Q After 1970 did you see him quite often?

A I saw him on some of his trips, because he was in Bolivia, working for the U. S. Government on the Development Bank.

Q Did you see him in Miami and did he come to Puerto Rico?

A Yes, he was going to Puerto Rico some times.

Q Do you see Antonio Veciana in the courtroom?

A Yes.

Q Point him out to the jury, please.

A Yes, the gentleman with the red tie (indicating).

MR. LITTLEFIELD: Pointing to Mr. Veciana, your HOnor.

THE COURT: Yes, he identified Mr. Veciana.

Q Now, do you know Ariel Pomares?

A Yes.

Q When did you first meet him?

A Well, he was working -- first I knew him around 1966 or 1967. He was working in a trucking company, that the head man of the company he was working for had

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a partnership with the person he was working for in there. After that he was very diligent in his work. The trucking company close, and by that time of 1967 I was going on the Freca Importers, and the auto supply business, and I brought him to work as a salesman. We were a very humble organization, but he started as a salesman in the company.

Q Mr. Pomares?

A Mr. Pomares.

Q He started as a salesman for your company. Is that right?

A Yes.

Q Now, did he advance from being a salesman?

A Oh, yes. He became -- while I was married not as much, but after I got divorced, he became my righthand man. He had one signature on the back to sign, like me, and he was authorized -- he acted like he were the owner.

Q Did he have a title in Freca Importers?

A Yes. He was Treasurer, but in 1971 he start working half or one third of his time with Freca. Let's say one hour or two hours a day, because he like the real estate business and he was selling -- like I did before for Farnsworth, he was selling land for

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people from West Palm Beach. I was going to lose an active person, so I offer him that I could get the franchise of General Development of Florida, and I offer to become with me 50 percent of that business. That company, the name was Occidental Investment.

Q Could you spell that?

A O-C-C-I-D-E-N-T-A-L , Investment, I-N-V-E-S-T-M-E-N-T . At that time he was supposed to invest $3,000, and I was supposed to invest $3,000. The shares were never issued because he was the one that I assign as an incorporator. It was a matter of letting the thing go.

Q Now, moving through to 1971, late 1971, did you have a conversation with Mr. Veciana on the subject of cocaine?

A Yes.

Q And could you tell the Court and jury what that conversation was?

MR. GARBER: May it please the Court --

THE COURT: Where was it?

Q Where was the conversation?

A This conversation was in San Juan.

Q Do you know any more specifically where?

A In my office.

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Q In your office in San Juan?

A Yes.

Q Can you pinpoint --

THE COURT: Wait a minute. You have an objection, Mr. Garber?

MR. GARBER: Yes, sir. The objection is that the conversation referred to occurred in excess of a year outside the dates of the indictment.

THE COURT: You have an exception to that. I will hear it.

Q You may answer the question.

A Actually, we had, not until later, we mentioned only about the cocaine, the way this thing was sold or handled by the people in Bolivia, but we didn't talk about doing business of cocaine at that time.

Q What specifically did he say?

A Well, we talk during that time -- we --

THE COURT: Instead of "we talk" I think it would be better if you tried to remember what you said to him and what he said to you.

THE WITNESS: Well, at that time I ask him, I was reading in the newspaper how were the things in Bolivia and there was a big traffic of cocaine, and all that type of things, and that he must know about all

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those facts. He told me that in Bolivia the cocaine was even kept in the banks after being captured by the police; that the Ihdians over there, you could find the cocaine living around anywhere and ycu could chew that. We didn't talk more about it. We just forget.

Q Did he make any comment about where he could obtain cocaine?

MR. GARBER: Excuse me, I object to the question as being leading and suggestive.

THE COURT: Try not to lead.

A No.

THE COURT: All right, he didn't make it anyway.

Q Now, some time after that meeting which you have just described, did you have a business venture regarding land near the airport in Miami --

MR. GARBER:: I object again. That question is suggesting the subject matter of the answer.

THE COURT: Try and not lead the witness. Of course I understand Mr. Littlefield's problem because the witness has a little trouble with the English language and I sympathize with that, but I think you had better not lead.

I think the witness testified about the real

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estate business earlier.

MR. LITTLEFIELD: I have a specific question.

Q Did you have a problem with real estate land in Miami?

A Did I have what?

Q Was there an event involved with land --

THE COURT: What time are you talking about?

MR. LITTLEFIELD: After the conversation he has just described. Some time after that conversation.

A Our conversation at that time in San Juan, at that time came because we were organizing --

MR. GARBER: I object to the answer as not being responsive to the question. He is going back to another matter which he previously testified about, and it is unresponsive.

THE COURT: All right.

MR. LITTLEFIELD: Your Honor, if I could ask one question just to pinpoint the subject.

Q Did you own land near the airport which was taken by the Government?

A Yes, it was taken by the Government.

THE COURT: Where?

THE WITNESS: Miami. It was expropriated by the Port Authorities.

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Q What were the circumstances of that?

A Well, we had about 24 units to build and also in front of those 24 units was another piece of land for 102 units. I went into participation in those 102 units becayse they were the same people that were building around the area. All of a sudden, the Port Authority decided that they wanted that area for parking, and they expropriated the property.

Q By eminent domain?

A By eminent domain, yes.

Q Were you able to use the proceeds right away?

A No. You know, you have to go to Court.

Q Did you have loans outstanding at that point as well in connection with your business?

A Yes.

Q Now, did you also at that time have a business venture with Mr. Veciana that was relating to baseball?

A Yes. Mr. Veciana is a very good friend of Felix Zabala.

THE COURT: Felix who?

A Zabala, which he happened to be a promoter of all type of public things, like boxing. He had the Hell Drivers in Puerto Rico. He had the connection to be able to take to Caracas, Venezuela, the Cincinnati Reds

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and the Pittsburgh Pirates for an exhibition of three days in Maracaibo and Caracas.

THE COURT: When was that?

THE WITNESS: That was 1972, in March when we took them. But before that time I start working with Mr. Zabala and with Veciana on the letter of credit that had to be issued to take to Caracas this baseball players.

Q Was this during spring training in 1972?

A Exactly, spring training. It was from March 15 to March 19.

Q And did you raise money for this?

A We both, both Veciana and myself, we invested money on the operation. Zabala was supposed to come up with one third of that operation, but he, as usual, never came up with his part, and I had to put his share. Mr. Veciana, I think he had to put some of Zabala's share also. I don't recall.

Q Did the venture come off? Did the teams actually go and play?

A Yes. The playing was done and we lose -- I don't recall exactly, but my share I think was $19,000 that I lose on those three days. It was a failure. I think Mr. Veciana lose also --

Q How much was his share?

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A I think about nine or ten thousand dollars.

Q Now, at that time also were you hoping to be involved with a boxer?

A No, I was not involved with the boxer directly. I had been a boxing promoter in San Juan when Zabala stopped being a boxing promoter, and I promoted several fights in San Juan. The first one was Buchanan against Laguna, which it was through the wide world of sports here in the States, and I lose $10,000 on that one. I lose around $35,000 in that period of time. In the meantime one of Zabala's boxers became light-heavyweight champion of the world in Caracas, the position that has Foster now.

Q It has who?

A Foster, F-O-S-T-E-R.

Q What happened in connection with that, did you make money on that or not?

A Zabala was training his man --

Q What was his name?

A Vinsente Rondon.

Q He was training him and what happened?

A Zabala was training him for a re-match, or a match for the championship in Florida between Rondon and Foster. That was the reason that he did not go --

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until the very last minute he arrive in Caracas. Veciana had to do all of the work at that time in there, because he didn't go to help him.

Q Because Zabala didn't go to help him?

A Yes. He was complaining he had this fight --

THE COURT: I don't think you need to get into that.

Q Did you make any money on Rondon or not?

A No, sir.

Q What happened?

A Well, because Zabala always was ahead of expenses, what the boxer was making on his fights. Mr. Veciana was not able to get his money that was owed to him by Zabala.

Q Did Rondon continue to have success?

A He was knocked down in one round in Miami that coming week.

Q By whom?

A By Foster. He was terminated there.

Q Well, at this point did you have another conversation with Veciana about kocaine?

A By this time -- in his trip to Miami we were planning to sue the Cincinnati Reds --

MR. GARBER: Excuse me, may we have the witness

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fix a time now?

THE COURT: Yes.

Do you remember when this was about?

THE WITNESS: This must be in April 1972.

THE COURT: In Miami?

THE WITNESS: No, in San Juan.

THE COURT: In San Juan?

THE WITNESS: Yes. When we going to sue those two baseball clubs because they make a lot of trouble for us in Caracas. Then our lawyer said that it was going to be very difficult to sue them, and we came to the point, came to the discussion of our financial situation, that we were going into trouble. During our conversation there I don't recall if it was him the one that told me or it was I that told him, but came the matter of cocaine --

MR. GARBER: I hate to keep interrupting, may we have a better predicate as to who else was present, where did this conversation take place?

THE COURT: Yes. Where did it take place?

THE WITNESS: This was not done in a park. It had to in an office.

THE COURT: It was in your office?

THE WITNESS: Yes.

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THE COURT: Where was your office?

THE WITNESS: In Carolina.

THE COURT: Carolina?

THE WITNESS: Yes, Puerto Rico.

THE COURT: In Puerto Rico, all right. This, you say, was in April of 1972?

THE WITNESS: Yes.

Q Was there anyone else present?

A No. Just him and me.

Q If you can remember what the Judge said, just try to say what you said and what he said.

A Well, I will not like to be fair with me or me, I don't remember at this particular point if it was me the one that asked him about the cocaine or if it was him that told me about the cocaine.

THE COURT: After that what happened?

THE WITNESS: He told me that he was in position to put a kilogram of cocaine right in my desk. I said "You must be crazy, because there is a lot of people behind that thing."

He said "No. If you use the Government APO system of sending package, they don't check those package."

Then I say "Maybe you believe that, but they can smell the package with dogs and that type of things."

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He said "I am in position to furnish cocaine. I am going to check about the cocaine in Bolivia." And he left and we did not talk more until when he came back, again where he had information about the cocaine, how it could be bought --

THE COURT: When you say he came back, where did you see him next?

THE WITNESS: In San Juan.

THE COURT: He came back to San Juan?

THE WITNESS: Yes.

THE COURT: About when was that?

THE WITNESS: I think it was about the late part of May.

THE COURT: Late May?

THE WITNESS: Yes.

THE COURT: Where did you see him this time?

THE WITNESS: It was in my office, because he rented a car.

THE COURT: Anybody else there?

THE WITNESS: No, sir.

Q Did you have conversations about cocaine with Ariel Pomares when Veciana was in Bolivia?

A Yes.

Q Where were these conversations?

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A In the automobile because we were going together sometimes to have breakfast. I told him about if he knew of somebody that could --

MR. GARBER: I would object to any conversation takes place between this witness on the grounds of hearsay.

THE COURT: I will receive it subject to connection.

MR. GARBER: Will the Court instruct the jury?

THE COURT: I will at the proper time.

Q What did Mr. Pomares say to you and what did you say to him, if you can remember?

A Well, I told him that I had talked with Veciana about the possibility of being able to obtain cocaine in Bolivia, and if he knew of some place where to sell it, because I didn't know in regards to that thing at all.

He said to me that was a very dangerous thing, but he was going to find out in Miami with some of his friends that he haven't seen for years. That he had never been involved in this type of thing before, but he knew people that were on that.

When Veciana came and said that he was ready deliver the cocaine, that if he say if I tell you the

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people that I have a talk about this you are going to jump out of your chair because you are going to be very scared.

I said to him "I don't know, but if you have done it it is because you know what you are going."

Q This was with Veciana?

A With Veciana. He told me that he had a friend of his, which I don't recall his name at this time, had introduce him with the man in charge of the Interpol police in Bolivia; that this gentleman, Interpol, was in charge of watching the traffic of cocaine but he had a group of factories or refineries that he give them protection for a certain amount of money. And he was willing to sell for $2,000 a kilogram. He was going to charge a thousand for his protection because he would deliver the cocaine to him, was going to be the offer of Interpol, not the manufacturer. He had talked to a good friend of his that was a diplomat for a long time, and this diplomat was going to give or take $1,000. That was the first time, The cost was $4,000.

Q $4,000?

A Yes.

Q For how much?

A For one kilo.

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Q Did Veciana tell you specifically what he would do with the money and how it would be brought up, the cocaine?

A No. After we got the information, after I had the information from Veciana, also by that time Pomares had been in touch with some friend of his in Miami, and he had found a place where they could sell it for around $12,000 a kilogram, $12,500.

I told Veciana that we had the source and I gave him $10,000 International check, which you showed to me, to buy the first group.

MR. GARBER: I object to the reference of the check unless the check is available which would be the best evidence.

THE COURT: We will get to that. I will allow him to testify to it.

Q Let's go over the terms of the financing. Was this from a conversation with Veciana?

A Yes.

Q What was the financing to be, so we understand it?

A The other thing that he said, he said this diplomat could not bring with him more than 5 kilograms. So the cost of the kilogram was $4,000.

Q How does that break up? Did Veciana tell you how that breaks up?

A The break-down was $2,000 for the product itself, a thousand for the police protection, and a thousand dollars for the diplomat. That is $4,000.

THE COURT: This conversation that you last refer to, where was that conversation with Mr. Veciana?

THE WITNESS: In my office.

THE COURT: Again?

THE WITNESS: Yes.

THE COURT: All in Carolina, in Puerto Rico?

THE WITNESS: Yes.

Then Pomares had some people that he could sell it through, somebody that Pomares knew, that he had the possibility of selling it at $12,000 a kilo. It was $12,500 but the $500 was for this person that was acting like a broker on that.

Q The total sale price was $12,500?

A It was $12,500.

Q And to purchase it you had to pay $4,000?

A Yes.

Q So how much money did you get together to make the initial purchase of 5 kilograms?

A The initial purchase, it was $20,000. It was

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5 kilograms at $4,000 a piece.

Q How did you raise that money?

A I gave $10,000 to Veciana. He put in himself $10,000. Pomares didn't put any money in at all.

Q So that you and Veciana wplit the initial investment?

A Yes.

Q Do you know what the date of that was?

A The date --

Q The date of the initial payment of $10,000.

A On the check, you have the date when I sent the check to him. Without the check I will be guessing.

MR. LITTLEFIELD: May we mark this as Government's Exhibit 1 for identification.

***

(Government's Exhibit 1 is marked for identification.)

Q Now, I show you Government's Exhibit 1 for identification, and ask if you recognize that.

A Yes.

Q And what is it?

A The check was issued on June 20, 1972.

THE COURT: He asked you what that is.

Q Explain what that is.

A This is the voucher copy of the check. The

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original check either is in the bank, --

MR. GARBER: Objection to this. He is concluding these matters.

THE COURT: Just tell us what that is.

THE WITNESS: Well, this is a copy of the check.

THE COURT: Copy of the check, all right.

Has it a date on it?

THE WITNESS: Yes.

THE COURT: What is the date?

THE WITNESS: June 20, 1972.

Q More specifically, what kind of a check was this that you gave him?

A This was an International check, payable in New York. When you want a check for any part of the world, you make a New York check.

Q Was this a bank check?

A It was a bank check.

Q When they make a bank check do they make three or four copies at once?

A They make the original and two copies, like a voucher.

Q This is the voucher?

A This is the voucher.

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MR. LITTLEFIELD: I wonder how much longer we would go?

THE COURT: I promised we would adjourn a little after four.

MR. LITTLEFIELD: It is about three or four minutes of four now.

THE COURT: Why don't you go ahead and in about five minutes if you find a convenient place, you tell us.

All right.

Do you want to adjourn now and reconvene tomorrow morning?

JUROR NUMBER 6: Continue, please.

THE COURT: All right, we will continue.

Q You gave this check to Veciana. Is that right?

A I think this check was mailed to Veciana in Bolivia.

Q You think Veciana had already gone to Bolivia?

A Yes.

Q And did Veciana come back, and when he came back did you have a conversation or meeting with him?

MR. BOITEL: I object to the two questions.

THE COURT: Well, let's take the one.

When did you next see Mr. Veciana?

THE WITNESS: I saw Veciana when we were going

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to receive this cocaine, that shipment.

THE COURT: Where was that?

THE WITNESS: This happened at -- I am not exactly sure, but this happened during the month of August, late August or early September in Miami.

Q What exactly happened?

A Well, he had --

MR. GARBER: What year are you talking about?

THE WITNESS: 1972.

We did this three times.

Q What happened on this first time that you just described?

A On the first time, he receive a call from the diplomat to go to --

THE JUDGE: Did you hear him receive a call from the diplomat?

THE WITNESS: Veciana told me.

THE COURT: Where did he tell you this, in Miami?

THE WITNESS:: In Miami.

Q Where in Miami?

A He was visiting me at the Crossway Inn Hotel/

Q That is where you were staying?

A Yes.

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Q What exactly happened?

A He told me that he had receive a call from this diplomat that was staying at the Shelbourne Hotel, the same place where we had the boxer that was knocked down, the same hotel.

Q In Miami?

A In Miami Beach.

Q What happened, what did Veciana tell you?

A He had already with him -- in fact he was very surprised because he mentioned to me that the diplomat had delivered the 5 kilograms to him in one of those boxes that you use for the ice and Coca cola to take to the beach. They are foam, very light material. He said "You know, this man he gave me this. It was next to him. He was getting sun on his bench, and told me right there is your merchandise." He brought that into the hotel.

Q This is Veciana?

A Veciana.

Q Let me go back for a moment. Before this incident with the ice budget, or whatever it is, did Veciana tell you what he had done with the money which you had given him for the kilograms?

A Well, what he had done?

Q Did he tell you who he had given it to or what

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had happened?

A I ask him during our conversation before getting this cocaine how he had done it in Bolivia. He told me this man had worked it perfect. He had give him the 5 kilograms in two times.

Q When you say "He had give him," you have to put the names.

A I say the Interpol policeman had given Veciana the 5 kilograms, but not together at one time. It had been two or three times.

THE COURT: Don't tell us any more. You say he delivered it two or three different times?

THE WITNESS: Yes.

Q This was to make the full 5 kilos. Is that right?

A Yes.

Q Did Veciana tell you to whom he had given the money?

A Yes. He told me he had given the money to the Interpol agent, not to the manufacturer.

Q He had given the full amount of $4,000 per kilo?

A No, sir, $3,000. A thousand per kilo was to the diplomat. He had paid the diplomat the $5,000 when he gave the cocaine to be brought into the United States.

Q So now after Veciana got the cocaine from the

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Interpol person, what did he then do with the cocaine in Bolivia, if he told you?

Q Well, he told me that he had kept it in big safe he had in one of the banks there until the date or a few days or a couple of days before he was leaving Bolivia, and then he had delivered to the diplomat.

Q "He" being Veciana had delivered the cocaine to the diplomat?

A Yes.

Q And then did he tell you, Veciana tell you whether the diplomat had told him how he was going to bring it in?

MR. GARBER: I have been restraining myself, your Honor, but --

MR. LITTLEFIELD: If there is an objection to be made, make an objection. Not a speach about restraining himself.

MR. GARBER: I object to the line of questioning. Each and every question has been leading and suggestive. If he has a question, let him phrase it properly.

THE COURT: What is the question?

(Question read)

THE COURT: I will sustain the objection to that. What does Veciana say about the diplomat?

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THE WITNESS: At the time when he paid him?

THE COURT: Yes.

THE WITNESS: They were friends --

THE COURT: Did he say anything more? What did he say?

THE WITNESS: He gave the cocaine to the diplomat and he just wait for him to arrive. He came before to Miami before the diplomat came in.

THE COURT: All right.

Q Veciana came to Miami before the diplomat?

A Yes.

Q Then this business with the ice bucket, or whatever it is.

A Yes, in the Shelbourne.

Q Now, at that point was there a discussion about the cocaine?

THE COURT: Wait a minute. He is going to object.

MR. GARBER: Certainly I am. your Hwnor.

THE COURT: Let's straighten this out.

When you met Mr. Veciana, when you said he had this container on the beach. Is that right?

THE WITNESS: Yes.

THE COURT: Did you say anything else to Mr.

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Veciana which you have not testified to?

THE WITNESS: You mean when he gave the container?

THE COURT: Yes.

THE WITNESS:: No. Before giving the container we had a meeting. He visited me at the hotel and we were talking there about how he had done this because it was amazing to see how, with all this --

THE COURT: Don't be amazed, just tell us what he said, and what you said. Do you recall anything else that he said to you or you said to him?

THE WITNESS: No. He told me that the diplomat work -- had worked it out pretty good; that the Interpol agent supplied that thing, and that was it.

THE COURT: In other words, you have told us what was said?

THE WITNESS: Yes.

THE COURT: All right.

Q At that point was Pomares anywhere around?

A Pomares was at the hotel also.

Q Was he in a different room?

A Different room than I was.

Q Was he present when you had this conversation with Veciana?

A I don't remember if he was present when I had

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the conversation with Veciana about the first diplomat. But when Veciana brought in the case, that box into the hotel which I accompany him to bring it from the back of his car to upstairs to Pomares' room, then later we had a few words between us. We were talking, all of us three were surprised how that thing look and how that thing smell.

Q And did the three of you stay there, or did you depart from each other?

A Veciana left immediately, and I left because Pomares was going to prepare. For that purpose he had bought a small stamp scale to weigh that thing.

THE COURT: Scales?

THE WITNESS: Yes, a weight scale. Not like the one you will see here in evidence in the future, but like a postage scale.

THE COURT: Don't tell us about evidence. You mean a postage scale that you weigh letter on?

THE WITNESS: Yes.

Q Had he also bought anything else?

A Well, he bought some plastic bags to make a kilo out of each one of those things in there. See, we didn't have a kilo scale, and he had to go for two pounds, which is a kilo.

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Q Did he put them in kilo bags?

A Yes, he put them in bags that were more or less a kilo each

Q Did he tell you what he was going to do with it, or what he did with it?

A When we originally had a conversation between us three, which I don't remember exactly when it was, we had agreed that Veciana was not going to tell us the name of the diplomat; I didn't want to know the name of the man he was going to sell the cocaine or was acting as a broker.

Q "He" being Pomares.

A Yes. And I just knew from future conversations --

THE COURT: Let's not get into future conversations. This is all that happened at this time. Is that right?

THE WITNESS: Yes.

THE COURT: I think this might be a good time to break.

We will adjourn until 10 o'clock tomorrow morning, ladies and gentlemen. Please remember what I told you, please don't discuss this with anyone in the meantime.

I would like to say another thing. There are

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a lot of people involved here, and if one of us is late we hold up the whole parade.

Thank you very much for your attention. I hope you have a nice evening.

(Jury excused.)

(Adjourned until ten o'clock January 9, 1974)

* * *

(Recess)

AFTERNOON SESSION

1:00 p.m.

(In open court, jury present.)

A U G U S T I N B A R R E S , resumed.

THE COURT: Good afternoon, ladies and gentlemen. I am glad we were all able to get here. I am glad every one is here, and we are ready to proceed.

DIRECT EXAMINATION CONTINUED

BY MR. LITTLEFIELD:

Q Mr. Barres, please keep your voice up as you did yesterday, loud and clear and slow.

A Yes.

Q Now, yesterday you spoke about Government's Exhibit 1 for identification, which I believe you said was a voucher. is that correct?

A Yes.

Q Now, I show you Government's Exhibit 2 for identification, and ask if you recognize that.

A Well, this is the check that I bought with the voucher.

Q What did you do with that check?

A I gave it to Mr. Veciana.

Q And do you remember whether you gave it to him

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in person or mailed it to him?

A I am not sure if I gave it to him in person.

Q What did it represent? What was the purpose of giving him the check?

A This was the half of the share of the 5 kilograms that were coming of cocaine, the first shipment.

Q And how much was that check for?

A $10,000.

Q And by looking at that check can you tell whether Veciana's signature appears as endorser on the back and cashed?

A Here it has Antonio Veciana name. I think it is his signature.

THE COURT: You don't know?

THE WITNESS: I don't know, sir.

THE COURT: All right.

MR. GARBER: No objection, if you are offering it.

MR. LITTLEFIELD: I am offering it.

MR. GARBER: On behalf of Mr. Veciana, there is no objection.

MR. BOITEL: May I know against whom this is being offered?

THE COURT: This will be received in connection with Mr. Veciana subject to connection.

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MR. LITTLEFIELD: Also Exhibit number 1, your Honor.

THE COURT: All right, Exhibit number 1, too.

(Government's Exhibits 1 and 2 are received in evidence.)

MR. LITTLEFIELD: Your Honor, may I just read the face of the check to the jury at this point?

THE COURT: Yes.

MR. BOITEL: Perhaps your Honor could explain to the jury --

THE COURT: I will. I will do that in due course. The point is this check, according to the witness, was delivered to Mr. Veciana. There is nothing to indicate that Mr. Pomares had anything to do with this check.

I will instruct you in more detail on that later on.

MR. LITTLEFIELD: This is a check made out on Banco Credito, pay to the order of Antonio Veciana, $10,000, dated June 20, 1972, $10,000; Banco Credito, and then the paying bank is 1 Union Square Branch, Broadway at 14th Street Branch, New York, New York. It is signed -- I can't read the signature. It appears to be Nellie Rios, but that may not be correct, but I believe

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that is what it says.

On the back appears the various endorsements, the handwritten endorsement Antonio Veciana.

MR. GARBER: I would object to the characterization. There has been no testimony that in fact --

THE COURT: There won't be any characterization of the written name on there.

MR. LITTLEFIELD: That is what appears to be written, your Honor. What appears to be numbers underneath it, 022 something 43-8. Then there is a stamp across here "Pay any bank, FRB Miami." The date is July 12. There appears to be a stamp here as well. "Pay any bank, Banco Credito, New York, New York, July 13, 1972."

Then this exhibit is the copy of the voucher.

Q Now, you testified yesterday, Mr. Barres, about scales that you used or that were used to weigh out the 5 kilos.

A Postage stamp scale.

Q What happened, did anyone tell you what happened to those scales?

A Well, after the 5 kilos were separated into kilo bags, the scale and all the papers and the ice box and all the things that we had, we cleaned the place at the Crossway, and Pomares throw it in the garbage can.

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Q Now, after these 5 kilograms had been put into individual packages of 1 kilo each, what happened next, what happened to them?

A Well, from the 5 kilograms he took a sample --

THE COURT: Who is "he"?

THE WITNESS: Pomares. He took a sample and Mr. Pomares gave it to this person that he mentioned, like The Midget.

MR. BOITEL: I object, your Honor.

THE COURT: Well, I don't think I quite understood it.

You say Mr. Pomares took a sample and what happened?

THE WITNESS: Mr. Pomares took a sample of the cocaine in order that --

THE COURT: Don't tell us in order. He took a sample?

THE WITNESS: He took a sample of the cocaine to be delivered.

THE COURT: You didn't see it delivered?

THE WITNESS: No.

Q Did he tell you what had happened to it?

A Yes, he tole me that he had take it to The Midget so The Midget could take it to the old lady that

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was going to buy the cocaine.

Q And then did you hear what happened at that point?

A Well, the old lady agreed --

MR. BOITEL: Objection, your Honor.

Q Did you have another conversation with Pomares about what had happened,and what did he say if you did?

A Yes, Pomares told me that there had been agreed to buy it --

Q I am sorry, I missed that.

A It had been agreed by the old lady to buy the cocaine, and he deliver the fir t 2 kilograms.

Q And he told you that he delivered the first 2 kilograms?

A He delivered the first 2 kilograms, and he paid --

Q Did he tell you to whom he delivered them?

MR. BOITEL: Your Honor, this is the first reference I have heard in this case, I believe, to an old lady. Now if we can identify this individual, I think this would be an appropriate point for identification.

Q Do you know who this was?

A If the old lady would be identified she would

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be under arrest here.

THE COURT: Do you know the old lady?

THE WITNESS: No, I never seen the old lady.

Q Did you ever meet the old lady?

A I have never met the old lady.

Q Did you ever meet The Midget?

A Never.

Q A person called The Midget, you never met him?

A Never.

THE COURT: So what you are telling us here, this is what you say Mr. Pomares told you?

THE WITNESS: Yes, sir.

THE COURT: O.K.

THE WITNESS: Yes, your Honor. Excuse me.

Q Now, what happened next with respect to Pomares telling you what was going on with respect to his selling it?

A Well, it was the same mechanics. He deliver another kilogram --

Q Stick with the 2 kilos first.

A Well, he collected the money and he brought it back to the hotel.

Q And how much money was that?

A $24,000.

Q And could you explain how the money worked exactly at that point?

THE COURT: I don't understand the question. You say he brought back $24,000. What did he do with it?

THE WITNESS: Well, he gave me the $24,000.

THE COURT: He gave you the $24,000?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q What did you then do with the $24,000?

A I just kept the money with me for the first time.

Q Now, --

MR. GARBER: I would again offer an objection, your Honor. I renew my objection to all of this testimony in that it is my understanding this occurred in August of 1972, a date prior to the --

THE COURT: You have a continuing objection.

MR. BOITEL: As do I, your Honor.

THE COURT: That is right, surely.

Q Now, did you and Pomares discuss how much he was going to be able to sell the cocaine for?

A Yes.

Q And what did he say, and what did you say?

A Well, he said that it had been sold for

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$12,500 a kilgram.

Q Each kilogram, $12,500?

A From those $12,500 The Midget was taking $500 as a broker on that transaction; It left $12,000 a kilogram.

Q And when the 2 kilograms were delivered to The Midget you got back how much ?

THE COURT: Wait a minute. I think his testimony was this is what Pomares told him.

Q When Pomares told you he had delivered the 2 kilograms to The Midget, did he get the money back right away, or was there a time lapse?

A He gave first the 2 kilograms, and then that day later he was paid.

THE COURT: In other words, he came back to you with the money later in the day, later in the same day?

THE WITNESS: Yes.

THE COURT: All right.

Q Did you start dividing up the money at that point?

A No, it was not at that point.

Q You held on to it?

A I kept it.

Q Now, did Pomares tell you what happened to the

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rest of the kilograms?

A Well, this was going to be bought by this lady, but she was not taking everything at one time. So she bought another kilogram and then --

THE COURT: When did that happen?

THE WITNESS: About two days later.

THE COURT: Two days later?

THE WITNESS: Yes.

THE COURT: This is what Pomares told you?

THE WITNESS: Yes, sir, yes, your Honor.

Q Pomares did not take it directly to the lady, did he?

A No. He take it to The Midget, and The Midget to the lady.

MR. BOITEL: Your Honor, I object to the question being phrased and answers being put.

THE COURT: I think what you are concerned about, when you say that he took it to The Midget, you say that Pomares told you that he took it to The Midget to give to the lady. Is that right?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Try to phrase your answers, if you can, in terms of what he told you. Then we won't have any problem.

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A You have to excuse me, that I have never been in Court before, and I don't know how to answer.

THE COURT: All right.

Q Now, what happened, did Pomares tell you anything about what happened to the rest of the cocaine, how it was --

A No. It was kept inside of a radio box in his room, in the rear of a radio box during that time. It was a very good place because --

THE COURT: Just tell us it was kept there.

Q Did he then tell you what part of the 5 kilograms he delivered next?

A It was 1 kilogram.

Q Did he tell you who he delivered that to?

A In order to save time we only deal with one person. That was The Midget. And The Midget sold it to the old lady. I am repeating what Mr. Pomares said. If it was midget or if he was a giant, I never saw him.

Q Now, did Pomares tell you that he received the money for that one kilo?

A Yes.

Q How soon did he receive the monty?

A The same day.

Q And how much money did he receive for that?

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A The same amounts, all was at the same price.

THE COURT: You say the same amount for 1 kilo. What was that?

THE WITNESS: $12,500 less $500 for The Midget.

THE COURT: What happened to that $12,000?

THE WITNESS: The $12,000 came to me.

THE COURT: Who gave it to you?

THE WITNESS: Mr. Pomares.

Q So now you had $36,000?

A Yes.

Q And then what happened according to what Pomares told you, if anything, to the next kilo?

A About two days later they requested the next 2 kilograms, and --

MR. GARBER: I object to that unless the day is identified, and unless this request took place in the presence of this witness.

THE COURT: I take it Pomares told you this?

THE WITNESS: Yes. I will mention then Pomares.

THE COURT: All right.

Q He told you what?

A Pomares took the next 2 kilograms to The Midget.

Q He told you this?

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A Yes.

Q And did he bring back any money?

A He brought back the other $24,000.

Q What happened to that?

A We got the $60,000, and we had worked it out --

THE COURT: When you say "we" who do you mean, you?

THE WITNESS: We, at the time of splitting our profit --

THE COURT: I think he wants to go one step at a time. You say that Mr. Pomares brought back $24,000. Is that right?

THE WITNESS: Yes, sir.

THE COURT: And gave it to you?

THE WITNESS: Gave it to me.

THE COURT: So then you had $60,000?

THE WITNESS: That is right.

THE COURT: All right.

Q And what happened to the $60,000, and if you can please name the names that are involved and don't talk about we or he.

A At that time we had to divide the profits between Mr. Veciana, Pomares, and myself.

Q And did you have a meeting among the three

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of you?

A No. We didn't have a meeting because I had divided the money. Pomares -- Veciana had asked that he wanted $3,000 per kilogram. Then the balance was divided between Pomares and myself.

Q And how much was the balance?

A Well, the balance was $5,000, $2500 for Pomares and $2500 for me.

Q And what was the other amount? In other words, that doesn't make up the $12,000.

A The cost of the cocaine was $4,000, $3,000 to Veciana, $7,000; $2500 Pomares, $9,500; $2500 Barres, $12,000.

Q Did you divide the money up at that point?

A Yes.

Q How did you divide it up?

A We divided it and we did not divide it, because actually I gave Mr. Veciana his share of the participation, Mr. Pomares his profit, and --

THE COURT: Start with Mr. Veciana, how do you say you paid him his share?

THE WITNESS: Well, multiplying --

THE COURT: How did you pay him?

THE WITNESS: In cash,

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THE COURT: Where?

THE WITNESS: At the Crossway Inn.

THE COURT: At the Crossway?

THE WITNESS: Yes.

THE COURT: How did you pay Mr. Pomares?

THE WITNESS: Pomares, the same way.

THE COURT: Cash at the Crossway?

THE WITNESS: Cash at the Crossway.

MR. BOITEL: May we have a date for this transaction, your Honor?

THE COURT: How long after you weighed the 5 kilos did you get paid, and did you divide it?

THE WITNESS: This took about nine days, the whole sale of this thing.

THE COURT: All right.

Q So that the total amount going to each of you of the $60,000 was what?

A The profit was $12,500 Pomares, $12,500 myself, $15,000 Veciana.

Q Out of $60,000 now, how much did each of you get? I suppose if you want to use the blackboard, you may.

If that is all right, your Honor?

THE COURT: Yes, indeed.

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Put on the blackboard the cost of the first transaction.

Take your time, Mr. Barres.

THE WITNESS: I hate to say that word.

MR. BOITEL: I wonder if all this is really necessary?

THE COURT: Please, let's go ahead.

THE WITNESS: Cocaine cost $4,000, times 5 kilos, $20,000. Veciana, $3,000 times 5, $15,000. Then Barres, $2,500 times 5, $12,500. Then Pomares, $2,500, times 5, $12,500. The total is $60,000, divided into 5 kilos, $12,000.

THE COURT: All right, you may resume the witness stand.

MR. BOITEL: Excuse me, your Honor. Are these going to sit here through the trial?

THE COURT: We won't worry about that.

Let's go ahead with the questions. I don't know if there is any more relevance to it. If not, you can clean it up later on.

Q When the money was paid out did you each get your share of the original investment back?

A Yes.

Q So the total going to you was how much?

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A $12,500 plus $10,000 investment, $22,500.

Q The total going to Veciana was how much?

A It was $15,000 plus $10,000, $25,000.

Q And Pomares?

A $12,500 because he was an industrial partner.

Q Now, at the time that the 5 kilos were delivered by the diplomat, did you have a conversation with Veciana about the diplomat?

MR. GARBER: Excuse me, your HRnor, I would object to the phraseology of the last question. He is concluding that in fact it was delivered by a diplomat. This gentleman was only told that it was. It is am improper conclusion phrased in the question.

THE COURT: Did you ever see the diplomat?

THE WITNESS: No, sir. I was told --

THE COURT: By whom?

THE WITNESS: Veciana, that the diplomat was being transferred to Spain and that he was able to bring 10 or 12 kilos of cocaine into the States in his furniture. At the same time Veciana had asked him, now that this diplomat was leaving Bolivia, had asked him if he could get another person to keep supplying the cocaine, and he said that he substitute -- he would not mind to do the same thing that he was doing. We agreed, Veciana and me,

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to give the money so he could go back to Bolivia and buy the 10 kilograms of cocaine there.

Q Did you talk about 10 or 12?

A The diplomat said 12 or 10 kilograms. We were shooting for 12, but I didn't have the money. At that time I said I was going to send it later to him. I gave Veciana the $22,500 -- , when he brought in -- when Veciana delivered to me the first kilogram of cocaine, he told me that the next cocaine was going to be at $4,500 because of the dollar devaluation that took place at that time.

Q Instead of $4,000?

A It was going to be $4,500.

Q The price war?

A The factory, or the one making was asking more than $2,000, was asking $2,500.

THE COURT: So do I understand it, you say that Veciana told you that the next delivery would amount to $4,500 because the --

THE WITNESS: $45,000 -- $4,500 per kilo.

THE COURT: At which the cost would be $2,500 and then you had the $1,000 for the diplomat and the $1,000 for the man down in Bolivia. Is that correct?

THE WITNESS: Correct. If we were going to

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bring 10 kilograms at $4,500 a kilogram, we had to send $45,000. I gave Veciana my original $10,000, plus the $12,500 profit, I had made, which is half of $45,000.

Q Now, did Veciana tell you about the furniture? What was that?

A Well, the diplomat said that he was --

THE COURT: This is what Veciana told you?

THE WITNESS: Exactly, sir. Veciana told me that the diplomat was sending his furniture and he was expected to arrive in the United States during the month of December. He was sending his furniture through the Panama Canal.

Q On a ship?

A On a cargoe boat. It was a regular bota, not like Sea Train, for example, or Sea Land. There are not many lines that go down to South America, commercial lines, you know.

Q Now, at that time did you have a conversation with Pomares about where to keep the money?

A Yes, we, because of this transaction and all that money, even though that many of it had been paid in hundred dollar bills, it was a lot of cash, we agreed to open a safe deposit box.

Q Who is "we"?

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A Pomares and me. A safe deposit box at the Fidelity Bank in Miami.

Q Did you have a discussion with him as to what the purpose of the opening the box was?

A The discussion of the purpose was to keep the money there as we collect it and to have it just dedicated to that type of transaction.

Q Did you have the box in time for the first transaction?

A I beg your pardon?

Q Did you have the box in time for the first 5 kilos?

A I don't recall, I don't recall. I would have to see the dates.

Q I show you Government's Exhibit 3 marked for identification, and ask if you recognize that.

A Yes. This was part -- part of the money was of the first transaction.

Q What is that? Describe what that is.

A This is a safe deposit box that we had --

THE COURT: This is a record of the safe deposit box?

THE WITNESS: Yes. This was dedicated just to the matter of this cocaine thing.

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Q Now, does your signature appear on that?

A My signature, yes.

Q And also Pomares?

A Pomares' signature, yes.

Q Who took the box out, can you tell from that sheet?

A Well, the box originally was taken by me with him allowed to go in. But the first deposit to this box was made --

MR. GARBER: Objection. The question has been answered. He is going beyond the question.

THE COURT: All right.

It was opened by you and he had access to the box?

THE WITNESS: Yes.

THE COURT: Pomares.

Q Do you know the date it was opened? Does it tell that from the card?

A Well, it say October 72 on the receipt, but let me see.

The first time was October 5.

Q Of what year?

A 1972.

Q And who --

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MR. BOITEL: I didn't get that date, your Honor.

THE COURT: October 5.

MR. BOITEL: May we examine that document since it is apparently coming in?

THE COURT: Yes.

MR. LITTLEFIELD: Here you are (handing).

Perhaps we can save time if Mr. Boitel keeps a copy of it and looks it over, and I will proceed with the original.

THE WITNESS: Mr. Littlefield, that copy is a certified copy that I need for the Internal Revenue Service.

MR. LITTLEFIELD: Is there any objection to this?

MR. GARBER: Let me take one further look at it.

MR. LITTLEFIELD: Yes (handing).

MR. GARBER: Prior to my stating, could you elicit testimony with regard to the identification of these signatures?

MR. LITTLEFIELD: Certainly.

Q Mr. Barres, whose signatures appear on this document, if you recognize the signatures?

A Well, the signature here is Mr. Pomares' signature, Barres' signature, and on August 21 I went with

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a lawyer and a witness -- of

Q Of what year?

A With a lawyer and a witness outside because the bank refused to be a witness to testify.

Q And the signature of the lawyer and the witness are there?

A The signature of the lawyer and the witness. That is why it was certified there, and that is why it has a sworn statement also of the lawyer that went to open the safe --

MR. GARBER: On behalf of the defendant Veciana I have no objection.

THE COURT: All right.

MR. BOITEL: I have no objection.

THE COURT: All right, it will be received.

(Government's Exhibit 3 is received in evidence.)

MR. LITTLEFIELD: Your Honor, would you like to see it (handing) ?

THE COURT: Thank you.

MR. LITTLEFIELD: Your HOnor, may I briefly read this to the jury?

THE COURT: Yes.

(Counsel reads Government's Exhibit 3 in

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evidence to the jury.)

Q Now, Mr. Barres, referring to Government's Exhibit 3, what was the second time that an entry or entrance was made into that box?

MR. GARBER: Your Honor, I think the document would speak for itself. It has been received in evidence. I think certainly the jury would be entitled to view it if they wished.

THE COURT: Certainly they are entitled.

You can ask him about the second time.

MR. BOITEL: If he was there.

THE COURT: If he was there.

MR. BOITEL: Of course he would not know whether that was first or second or third.

Q Now, as far as the access is concerned, I wanted to use this just for date reference, your Honor. I wanted to ask him what the various visits were.

THE COURT: Was this a visit as to which he signed in?

MR. LITTLEFIELD: No.

Q October 5, who signed on October 5?

MR. BOITEL: I object unless he can identify the signature.

THE COURT: I think he has done so.

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Q Who signed on October 5?

A Pomares.

Q October 13?

A Pomares.

Q Did he tell you what he went in there on October 5 and 13 for?

A To keep money that had been collected.

Q So the first visit or the second visit was eight days after the first visit?

A Yes.

Q Did he tell you what the purpose of the second visit was?

A The purpose of the original visit there was to deposit money of this transaction.

MR. GARBER: I object to this answer.

THE COURT: The question is here, the first access of Mr. Pomares was on October 5. You told us that he told you that he went in there to put in money. The next access, which is also Mr. Pomares, was on October 13. Did he tell you what he did there on October 13?

THE WITNESS: I am not sure at this moment.

THE COURT: If you don't recall, say so.

THE WITNESS: I don't recall, sir.

Q Was it at this point in time roughly that the

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money was given to Veciana for the next shipment?

A Yes.

MR. BOITEL: I object to "roughly", your Honor.

Q Approximately, if I may use that word?

MR. GARBER: I object also, your Hwnor.

THE COURT: I will sustain the objection. I think you can ask the witness whether looking at that refreshes his recollection as to when the next money was given to Veciana, if you will.

Q By making reference to the safe deposit box access record, does that refresh your memory as to when the money was paid to Veciana?

A Yes. It was the money that had to be paid to Veciana and also my money that had to be given to him to go to Bolivia to buy more cocaine.

Q And what was the date on that, if your memory is now refreshed?

A Well, it was in October, the last time -- that Pomares went to the bank to pick up the --

Q Now, during your conversations with Pomares and Veciana, did you discuss any kind of a code?

A Well, Pomares and myself, we were involved in the sale of land. So in our language instead of saying kilogram or kilo, which everybody knows what it refers to,

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we were referring to the cocaine as acres. When we had to say if the cocaine was arriving, we would say the documents are ready to be signed for the acres of land, or the papers are ready to be signed, that type of language we used, which is real estate.

Q And you would use this where?

A We use also the deeds are ready to be signed.

Q And where would you use this language?

A If we had to have a conversation on the telephone we did not know -- they have wire tap of so many --

THE COURT: Don't tell us that. This was a code you used on the telephone?

THE WITNESS: Yes.

Q Did you discuss this with Veciana?

A With Veciana also I mentioned if we had to talk about this, we had to talk about documents, deeds, and acres of land.

MR. GARBER: May we have a predicate as to when that conversation took place between Mr. Veciana and him regarding this code?

THE COURT: If you remember, do you recall when you spoke to Mr. Veciana about using the code?

THE WITNESS: Yes, we spoke in regards to that

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on the delivery of the first 5 kilograms at the Crossway Inn Hotel.

Q When you gave the money, the $22,500 to Veciana, did he tell you where he was going?

A He was going -- he always did the trips Miami --

MR. GARBER: I object to this answer as to "he always did the trips." The question was specific.

THE COURT: Yes, tell us what he told you about taking this particular trip, if you recall.

THE WITNESS: Well, normally he would fly to Caracas from Miami --

MR. GARBER: I object again. I am not concerned with "normally."

THE COURT: Do you remember whether Mr. Veciana told you how he was going on this second occasion, I take it, when you had given him the money for the second batch of cocaine?

THE WITNESS: Caracas, La Paz.

THE COURT: He was going to go by air?

THE WITNESS: A few days in Caracas.

THE COURT: La Paz by air?

THE WITNESS: Yes.

THE COURT: La Paz is Bolivia, ladies and gentlemen. I will take judicial notice of that.

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a Q Did you see Veciana when he came back?

A When he came back after we had give him the money for the second trip?

Q Yes.

A Yes, I saw Veciana --

THE COURT: Where did you see him, sir?

THE WITNESS: At this time I think in San Juan.

THE COURT: San Juan, Puerto Rico?

THE WITNESS: Yes. You have to --

THE COURT: Don't tell me that. You recall it was in San Juan?

THE WITNESS: Yes.

Q And did you have a conversation with him?

A Veciana told me at that time that the diplomat had not been able to send his furniture -- his furniture was still in Panama, because his Government was waiting for a low price, low fare boat, cargo boat to bring the furniture into the United States, to Connecticut.

Q Did he tell you whether there would be a delay?

A He said that they did not know at that time, because it all depends if they could find a boat with a cheaper rate.

Later on he told me it was arriving during the month of March.

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THE COURT: Where was that? Was that in San Juan?

THE WITNESS: No, I think this was in Miami.

THE COURT: So you saw him after that in Miami?

THE WITNESS: Yes.

THE COURT: Do you remember about when that was that you saw him in Miami and he told you the shipment would come in March?

THE WITNESS: Your Honor, I could not recall, because I travelled so many times between Miami and San Juan.

THE COURT: All right.

Q Now, did he tell you anything about a second diplomat?

A Well, at the time when he went to Bolivia and bought the cocaine for this, and he delivered to the first diplomat, the first diplomat --

MR. GARBER: I object to phraseology of the answer. He is stating that --

THE COURT: All you take it is what Mr. Veciana told you.

THE WITNESS: All right.,

Q What did he tell you on the subject?

A Veciana told me that the second diplomat had

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been introduced to him and had agreed to keep going on the same terms that we had with the first diplomat.

Q Did he tell you what the quantity of this second shipment was?

A He told me that it was going to be 12 kilograms.

Q Now, did there come a time, or did the time arrive when Veciana told you that the cocaine was about to arrive?

A Yes.

THE COURT: Where did he tell you that?

THE WITNESS: Well, he told me in one of his trips to San Juan that he had finally found out that the furniture had arrived in Connecticut, and this first diplomat --

Q I am sorry, I can't hear you. You have to keep your voice very loud if you are going to speak across the room.

A He told me that the furniture had arrived in Connecticut, and that this first diplomat, which was already in Spain but had his family in Connecticut, was flying from Spain to Connecticut to bring him the cocaine in Miami.

Q Now, did you have a conversation with Pomares about what you were going to do with this second load of

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cocaine, and where you were going to store it?

A We had a conversation because we could not use the hotel for that amount of cocaine. The International Airport Village, which is very close to the Crossway Motel, had apartments for rent. And we went over there to see the apartments and we found a good place where to keep the cocaine hidden.

Q Did you look at a number of apartments?

A No. We had seen that from the very beginning.

Q What do you mean, you found a good place to keep the cocaine?

A Well, because this was a piece of kitchen cabinet about this size, and here was the stove, and had these screws, it was a screw like this (indicating). You could remove the stove, remove the screws and it was like this big (indicating). It was kind of like a safe box.

Q Was the apartment rented?

A Was the apartment what?

Q Was the apartment rented?

A We rent it -- he rented the apartment.

THE COURT: You say Mr. Pomares?

THE WITNESS: Mr. Pomares rented the apartment. A few days before it was.

MR. LITTLEFIELD: May we have this marked as

Government's Exhibit 4 for identification, please.

(Government's Exhibit 4 was marked for identification.)

Q Now, I show you Government's Exhibit 4 for identification, Mr. Barres, and ask if you recognize that?

A Well, I recognize this one here, but this one that say "apartment lease" I never saw that before.

THE COURT: You only saw the page in the back?

THE WITNESS: Yes. This other one I have not seen before (indicating).

Q What is this?

A This is a lease application that they request from the people for renting.

Q For what apartment?

A For the apartment of Italian Village, Apartment 111.

Q Who is the apartment rented to?

A It was under the name of Occidental Enterprise Group.

Q Who is the lessee?

A Applicant's signature is Pomares.

MR. LITTLEFIELD: Your Honor, perhaps I will continue while defense counsel examines it.

THE COURT: Surely.

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MR. LITTLEFIELD: Is that all right, Mr. Boitel?

MR. BOITEL: Yes.

Q Now, in addition was a phone, if you know, taken out?

A It was put in, a telephone.

THE COURT: A telephone was put in?

THE WITNESS: Yes, it was put in.

Q Who put that phone in?

A Pomares.

Q Do you recognize Government's Exhibit 5 for identification?

A Yes.

Q What is that, a telephone bill?

A Telephone bill from the Southern Bell Company.

Q Now, did there come a time after you rented the apartment when you went to Miami and called Veciana, after the apartment was rented?

A For the second delivery?

Q Yes.

A Yes, I call V biana.

Q And what happened?

A He told me that he had already the stuff and at that time he told me that the diplomat had delivered to

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him at the Dorral Hotel.

THE COURT: What hotel?

THE WITNESS: Dorral Hotel, Miami Beach.

Q And what happened? Did you see Veciana ?

A Yes, he came to see me. He said that --

MR. GARBER: Your Honor, may we have a predicate as to an approximate date and time?

THE COURT: Do you remember about when this was?

Q Perhaps it would refresh --

MR. GARBER: It may not need refreshing.

MR. LITTLEFIELD: Very well.

THE WITNESS: This was in the early part of April, middle of April.

MR. GARBER: What year, please?

THE WITNESS: 1973.

Q Was it some time before or after this apartment was rented, if you know?

A A few days after the apartment had been rented.

Q The date on the lease is what?

A The lease is April 3. This was a few days after.

Q Now, did you meet Veciana?

A Veciana went to the Crossway Inn and I went with him to his house to pick up the package of cocaine. He had tole me at that time when he talk at the hotel with

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me, that instead of 12 kilograms there were coming only 10 kilograms. And the diplomat had advised him that the 2 kilograms had been left in Bolivia and were going to be given to him by the second diplomat.

Q Now, you said before that you paid $22,500 for this load, which is half of $45,000, which would have been 10 kilos.

A Yes.

Q Was there an additional payment, if you know, from anyone having told you anything, for the other 2, which would have made it up to 12?

A I don't recall at this time, and I want to emphasize here that this was not my main business. I could not remember if I gave him an additional amount for the other 2 kilograms or if I did not give it and he put it in himself. I do not remember at this stage.

Q Now, how did you get to Veciana's house?

A I went in his car.

Q Do you remember what kind of car it was?

A He has a Dodge Dart car.

THE COURT: A what?

THE WITNESS: A Dodge Dart.

THE COURT: A Dodge Dart car?

THE WITNESS: Yes.

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THE COURT: All right.

Q And what happened?

A He had these two bags. These were like on the markets, the supermarket bags.

Q Shopping bags?

A Yes, but the ones that you use in the supermarket to put the food that you buy.

Q Plastic or paper?

A No. Inside were the garbage can plastic, and outside was the Kraft paper, I think it is called. The bags that they use in any shopping place.

Q Like a brown paper bag?

A Yes.

Q And what happened when you got to the house?

A We went to his house --

THE COURT: Where is his house, incidentally?

THE WITNESS: In Miami, on the southwest.

THE COURT: The southwest part of Miami?

THE WITNESS: Yes.

Q What happened at the house?

A His family was not there, and we went to a small metal house that he had behind the house, and there were the two bags in there and we pick up the two bags.

Q Where did you take them?

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A We put it on his car. By that time Pomares was at the Crossway Inn Motel. They transferred from the car, from Veciana's car to Pomares' car the cocaine, and Pomares went to the Italian Village to prepare the 10 kilograms in --

THE COURT: You are going too fast. That is not the question. Let me see if I understand it. You went to Mr. Veciana's house, the bags were put in the car, and then you took them somewhere. Where did you take them?

THE WITNESS: From there we went back to the Crossway Inn Motel.

THE COURT: There you say was Mr. Pomares's car?

THE WITNESS: Mr. Pomares was in his room. I call him. He went downstairs. We talked for a few minutes at the lobby, and he went to Veciana's car and they transferred from one car to the other.

THE COURT: All right. And then what did you do after that?

A After that I just stay at the hotel, and Pomares went to the Italian Village apartment.

THE COURT: He told you that later?

THE WITNESS: Yes.

THE COURT: Anyway, he left with the bags.

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THE WITNESS: Yes. The idea was at that time also he had been able to get from The Midget a scale to weigh more accurate the cocaine.

Q A bigger scale than the postage scale?

A A scale that is used to weigh metal, or to weigh pharmacy products.

Q Now, you were in which hotel?

A At the Crossway Inn.

Q Where was Pomares?

A He was at the Crossway Inn.

Q And where did he take the cocaine?

A He took it to the Italian Village.

Q To the apartment?

A To the apartment that had been rented for that purpose.

Q Now, did he tell you what happened, what he did at the Italian Village apartment?

A Well, I had to go to other activities of my own. And when I arrived at the hotel about 6:30, 7 o'clock, he told me that everything had been separated, the kilograms were ready, and there had been a shortage of half a kilogram of the 10 kilograms, which either, it was his thoughts that they had given less amount to Veciana or that type of paper absorbed some of the strength of the

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cocaine.

Q And did Pomares tell you where he was storing these individual packages?

A As he was going to deliver them to The Midget, he had part of them kept in what we can call the safe box --

Q Where was that?

A On the stove that had the piece of wood -- next to the stove, in the kitchen cabinet. And he had some of them on the ceiling, two of them to start delivering to The Midget.

Q Did he tell you where he kept the scales?

A The scale, which he was very worried about. He said it was worse to have it than a machine gun, he had put it inside that place also.

Q Now, did Pomares tell you what he did with these individual packages of cocaine?

A He start delivering them to The Midget.

Q And did he tell you whether it was working out --

THE COURT: I will sustain the objection to that question.

Tell us what he told you about delivering to The Midget.

THE WITNESS: Well, your Honor, they sold --

THE COURT: Tell us what Pomares told you.

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THE WITNESS: First of all, and I have to go backwards, during this time that the cocaine had not come from Bolivia, Pomares had found out through The Midget that the old lady was being investigated by the Internal Revenue Service, and that she had to stop buying that --

MR. GARBER: I object and move to strike that. That is, in effect, double hearsay.

THE COURT: I will sustain the objection.

Let's not worry about what he told you about the old lady. Tell us what Mr. Pomares told you about these particular packages.

THE WITNESS: It was going to be a new purchaser.

THE COURT: A new purchaser?

THE WITNESS: Yes.

Q A new purchaser?

A The Midget had told Pomares and Pomares told me that it was a new purchaser now, and they delivered the first kilogram. At that stage when Pomares originally talked with The Midget, he told The Midget that the cost of this product was $11,500, and he was half with The Midget. So he was receiving $12,000 and The Midget $500. But The Midget, instead of being a broker, became kind of another associate, because he told Pwmares that he was able to sell it to $14,000, but he wanted the half between

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$12,500 and $14,000.

Q So did you get money back from the sale of these --

THE COURT: This is one kilo now?

THE WITNESS: One kilo, he brought in the money.

THE COURT: Who did?

THE WITNESS: Pomares.

THE COURT: All right.

THE WITNESS: The next day the person that bought this from The Midget went to The Midget and told him that --

MR. GARBER: Objection, your Honor. That obviously would be hearsay. It would be a conversation between --

MR. LITTLEFIELD: It would be admissible, your Honor.

THE COURT: On this I will allow it.

What did Pomares tell you that The Midget had told him about the next day?

THE WITNESS: On the next day the buyer had arrived to the house of The Midget, telling him, The Midget, that he had -- the cocaine he had buy was not good, was not strong enough. The Midget was very upset. Pomares had to take another kilo to The Midget and compared what

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this first buyer was showing as the cocaine given to him with the one that we had. And finally this buyer agreed that perhaps he had buy that from some other person, and the things were settled there.

Q Now, were additional kilograms of this 9 1/2 kilograms sold according to what Pomares told you?

A The 9 1/2 kilograms?

Q Yes.

A Not all of them.

Q You have contracted for 2. Now, what happened to the rest?

A I think it is going to be a little bit complicated to explain this. But let's see how we can go.

Q This is what Pomares told you, right?

A Exactly. First of all, we had 9 1/2 kilograms instead of 10. Then he start giving the first 5 kilograms to The Midget and he was selling.

By this time I was almost completely out of that transaction because it was kind of a routine thing.

Q Let me interrupt you for a moment. Did you have a discussion with Pomares about whether or not you wanted to be seen or be involved in the sale?

A Oh, well, that was definite. I told him I did not want to know who The Midget was and I did not want

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that The Midget knew who I was.

Q Did you have a conversation with Veciana about whether you were going to know about that end of the operation?

A Veciana always refused -- he said always that he did not want to know who we were selling that to, and he was not going to tell us either who his people were that he was getting the cocaine from.

Q Now, if you can briefly, give us the rest of what happened to the 9 1/2 kilos, according to Pomares.

A The money started coming in and it was deposited in the safe.

Q Did it take a long time?

A No. At first, they move it more or less fast. During this period of time, the first money that we were receiving we would going to have it ready for Veciana so he could go to Bolivia and start with the new diplomat, bringing the cocaine in, because it took six months from the first transaction to the second transaction. We start giving him money. By that time he went to San Juan and I took $13,000 myself with me and I gave it to him.

THE COURT: Where?

THE WITNESS: In San Juan.

THE COURT: You took it from Miami to San Juan?

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THE WITNESS: Yes.

Q Who did you give it to?

A To Veciana.

Q This was for what purpose?

A To buy cocaine for the second diplomat.

Q What --

A Plus the other monies that we were going to send him by check, you know, transferrance, to Bolivia.

Q Do you remember what month this would have been?

A I don't recall the month. I just remember that his automobile was stolen in San Juan, the one that he had rented. He had the $13,000 inside the automobile, and he lose his reentry permit and the $13,000, and I think some more of his own personal money.

Q Now, at this point were deposits being made in the savings account?

A Yes.

Q Excuse me, in the safe deposit box?

A Yes.

Q Would this refresh your recollection as to the time (handing)?

A Yes, it was during the month of May.

Q Is there another access between the one in October that you described and now, the ones in May?

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A It was one on February 2nd here, but it did not have anything to do with anything. I just kept in there some jewelry that I had. I was getting in trouble with my wife, and I did not want to have the jewelry at the house.

Q Adn the next three accesses then -- the next accesses are May 21 and May 29, right?

A Yes. At that time remember we were owed 2 kilograms that had been paid by Veciana. So the amount we have to send was $36,000; $4,500 times 8 is $36,000.

Q I am afraid it is too fast at this point for me to understand.

On the previous deal you had paid for, you think, 12 kilos, but had only gotten 10. Is that right?

A That is right.

Qq So there were 2 still owed?

A In Bolivia.

Q So to pay for this third trip?

A Yes.

Q How much did you order on that third trip?

A It was a total of 10 kilos which this diplomat had agreed to bring.

Q But you only had to pay for 8?

A Yes.

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Q The price was what?

A $4,500 a kilo.

Q Which is $36,000.

A $36,000.

Q And the reason you did not have to pay for 2 of those kilos was because the shortage the time before?

A It was short before.

Q Now, did you get $36,000 paid?

A We were collecting the money, and the last amount or the balance to complete this $36,000 that Veciana needed when going to Bolivia, were given by me, the $13,000, in San Juan. But when his car was stolen both Pomares and me agreed that from our profit, without Veciana asking us to, from our profit we were going to give him $6,500 to help him on his loss.

Q Had there also been a problem with respect to half a kilo of the 9 and 1/2 which had been ruined?

A From the 9 and a half kilos, 5 were sold. It left 4 and a half kilos. Half of the kilo, Pomares told me that The Midget had tried himself or to mix that thing, and it had turned black. It was no good, because neither The Midget or Pomares or myself had any experience on that type of thing.

Q So that makes it 4 kilos left. What happened

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to the 4 kilos?

A From the 4 kilos, he sold -- at least I am repeating what Pomares told me, 1 1/2 kilo, one of the persons at the time of my arrest had not paid him, or he had take the money away.

Q So did you and Pomares discuss how The Midget was doing?

A Oh, The Midget by this time Pomares was very upset with him because he was getting drunk.

THE COURT: Pomares told you that The Midget was getting drunk?

THE WITNESS: Yes. And he was in the night clubs at night and he was very worried, because he was giving $20 to any person. He said he was scared, and we didn't want to tell that to Veciana because Veciana always emphasized from his side of the operation he was safe but he was very worried about who he was dealing with. We tried to impress Veciana that we had a good organization.

Q So in fact half a kilo had been lost.

A Half a kilo was a disaster.

Q Did you tell Veciana that?

A No, we could not afford to tell him that, because he would have been ascared who we were dealing

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with. We paid the 1 1/2 kilos from our share. We would liquidate him like everything was correct.

Q So, i 1/2 kiols of this amount you did not get the money for. Is that right?

A No, we did not.

Q At this point after you had given the money to Veciana, did you have a conversation with Veciana about his trip to Bolivia?

A Well --

THE COURT: I think we will take a recess at this point. We will take a short recess, ladies and gentlemen. You are excused for a few minutes.

(Jury excused.)

MR. BOITEL: I don't know what the relevance is of having this writing on the board. It has a subliminal effect on the jury.

MR. LITTLEFIELD: It is there to purely indicate the figures because it might be confused in the testimony. I will be glad to have it erased now, because it has served its purpose.

(Recess)

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2:30 p.m.

(In open court, jury present.)

A U G U S T I N B A R R E S , resumed:

DIRECT EXAMINATION CONTINUED

BY MR. LITTLEFIELD:

THE COURT: Proceed, Mr. Littlefield.

MR. LITTLEFIELD: Thank you, your Honor.

Q As we broke, I asked you whether you had a conversation with Veciana about what had happened when he went to Bolivia in connection with the third shipment.

A Well, he had told me that the second diplomat had agreed to bring the cocaine into the United States, but during that period of time --

Q I am sorry, your voice dropped just a touch. You remember, we have to hear way back here.

A During that period of time the diplomat had been ordered to go to Chile to make the vacation for a fellow diplomat. For that reason he was not going to be in Bolivia until late part of June or early part of July.

Q This is 1973?

A Yes.

Q I don't understand when you say "make vacation."

THE COURT: He went to relieve somebody in Chile who had to take a vacation?

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THE WITNESS: Correct, your Honor.

THE COURT: All right.

Q And did he tell you whether he estimated when he would be able to come to the United States?

A This diplomat explained to him -- he told me that this diplomat explained to him he had to be a few days in Bolivia in order to justify a trip to the United States, and it was expected he could make it around July 15.

Q Now, did Veciana tell both you and Pomares of these things?

A He told both of us, yes.

THE COURT: Where did he tell you this, do you remember?

THE WITNESS: This was told -- I am almost sure it was in Miami, but I don't recall. Some things some times --

THE COURT: You think it was in Miami, but you don't recall where it was?

THE WITNESS: Correct.

Q By the way, how many times have you been to Veciana's house?

A I have been in Veciana's house about four times.

Q Do you know the address?

A Well, his address, every time I had to go I had to pick it up from the phone book, because I am very hard to remember address or telephone numbers. But I know that it is between 27th Avenue and 42nd Avenue. He is in the 30's, on the 30's. This is very close to Flager Street. Flager Street divides --

THE COURT: What street?

THE WITNESS: Flager. Flager divides the south from the north. So I think he is on 7th Street of the Northwest, that area there, all is what we can call it the little Cuban ghetto. We consider everything where Cubans live to be south.

Q You are not sure whether it is northwest or southwest?

A I am almost positive sure that it is on the area from Flager northwest. I took always the address from the telephone book.

Q What?

A I took his address always from the telephone book every time I went over there.

Q Now, did you have a conversation with him, Veciana, about any extra money that he had paid in Bolivia?

MR. GARBER: May we have a predicate first of that conversation, please?

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THE COURT: Tell us about when this was?

THE WITNESS: When he came from Bolivia, which it was the early part of July, and I don't know if that could be verified with his passport or something. He lose his passport or reentry permit in San Juan, and they had to get him a new reentry permit in San Juan. He came in early July.

THE COURT: Early July?

THE WITNESS: Yes.

THE COURT: You had a conversation with him at that time?

THE WITNESS: Yes, sir. He told me -- first of all I receive a letter in which he was telling me that he had give an additional thousand dollars. This letter, immediately when I read it, I destroy it.

Q I am sorry, I was distracted. Could I have the answer back?

THE COURT: The reporter will read the answer back.=

(Answer read)

THE WITNESS: He told me he make all kind of efforts not to give the thousand dollars, because this thousand dollars had been requested from him from this Interpol agent as a donation to the Secret Service Police

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Chief. He said that he had given him a check from Miami for a thousand dollars, cash check -- I mean he did not write anything. Later he told me, he said "I wonder who this big fish is that he had a bank account, Swiss bank account number deposit here in New York, with a code number."

Q Now, with respect to the money that had come in on this second shipment, did you take any of that money for yourself, aside from the money that you had given to Veciana to go back to Bolivia?

A Yes. The original ten thousand dollars I had put in there, I took it, because I had to pay back a loan that I had. I took ten thousand dollars that were accumulated.

Q Did you go to the safe deposit box and take that out?

A Yes. It was deposited in my own bank account.

Q That would be your name on the safe deposit box?

A Yes.

Q Can you tell when that would have been?

A This was on July 2 -- June 29 -- wait.

Q Don't write on that.

A It has an entrance and outgoing each time. June 29, 1973, I went in at 12:48 and I went

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out at 12:53.

THE COURT: This is when you say you took $10,000 to pay the loan?

THE WITNESS: The $10,000 that I originally had invested on this.

Q Let's just check this to make sure this is right. If you count how many signatures there are on that card, 1, 2, 3, 4, 5, 6, 7, the seventh signature is Barres, right? It is just hard to see where it is lined up, right?

A That is right. Here if you go 1, 2, 3, 4, 5, 6, it comes to me that it is 6, which is June 29.

Q Pomares, Pomares, Barres, Barres, Pomares, Barres, Pomares, Barres, right.

A Yes.

Q That is the 7th signature, the Barres one is the 7th.

THE COURT: All he is saying is he thinks it was the 29th that he took the $10,000.

THE WITNESS: June 29 -- no, July 2, you are right.

Q It is next to the July 2nd date?

A Yes.

Q It corresponds to that?

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A Yes, it corresponds.

Q Now, at this point did you have a discussion with Pomares about what you were going to do to sell the next batch, this third shipment?

A Well, we were on the second shipment, Pomares was very upset, very nervous and very angry with The Midget, and he was also --

MR. GARBER: I would object to the answer being unresponsive to the question.

THE COURT: He told you he was angry with The Midget, and I think we already have that.

What is the question?

Q The question is did you discuss with Pomares how you were going to go about selling the third batch.

A Well, Pomares told me that because of The Midget getting drunk all the time, he did not have any confidence at all with The Midget, and we were going to look like two fools to the eyes of Veciana, and he did not know, and he would not dare to go to anybody else but through The Midget. And he said "We don't know anybody that could sell that stuff. If we knew some Mafia connection maybe that would be done."

Then from my mind when he talk about the Mafia connection I recall, in congress that I have been here

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in the States. I don't know exactly if it was 1967 or 1969, in a mortgage brokers congress I have net a person, after being introduced to her, the man that introduced me said that he was a grandson of a very well known Mafia captain, or whatever they give the ranks in that thing.

Q Did you have any discussion with this person?

A Then at that time --

Q This is in 1969?

A Yes. At that time we were talking about being fat. I am fat now, but I was, before I had this trouble, fifty pounds more. I have lost fifty pounds since this situation. I told him "At least you have hair," when we were talking, "but I am fat and bald."

He said, "This is a hair piece that I have, and why don't you get a hair piece." He took me to the place where he got his hair piece. We start talking and he told me he was bringing diamonds from British Guiana, and then he offered to sell me 200,000 birth control cases, the monthly, whatever the name of the birth control pills is, for 12 cents each case.

I said I am in the automotive and construction business. He said, "I will sell it to you at 12 cents." At that time I was married, and my wife was paying in Puerto Rico, $2.50 and $3.00. I thought this was something

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stolen, and I got away from him and I didn't talk to him at that time, because I did not want to get involved into any trouble.

Then when the Mafia word came to me, I said this is the man I should try to contact. During those days I had gone to the movies and saw that Up 110th Street, Harlem, is a movie having to do with Italians selling cocaine to colored people --

MR. GARBER: I would object, your Honor.

THE COURT: I kind of agree. Let's leave it that you remembered this fellow. And did you try and get in contact with this man?

THE WITNESS: Yes, your Honor, but I had to be prepare to talk to him. I have to get the dommendation of how to deal with this man.

THE COURT: Did you get hold of this man?

THE WITNESS: Yes. Finally I found out him, and I went to talk with him.

THE COURT: Where was that?

THE WITNESS: Your Honor, I would prefer not to say.

MR. LITTLEFIELD: The Government at this point, with respect to this man vis-a-vis 1973, has an informant's privilege it would claim.

THE COURT: Where was it?

MR. LITTLEFIELD: It was in New York.

May we refer to the man as Tony, which I understand is the first name?

THE COURT: Is that his name, Tony?

THE WITNESS: Correct, your Honor.

Q Now, what happened at that point?

A I visited his place, and he had a big office and he was with three or four men in there, but when he saw me he say hello, and he say that this operation is legitimate completely. I am doing a lot of business. I have a personal net worth of three million dollars. He had those closed circuit TV cameras to see the people coming to his office from his place. He had a big bouncer, strong man there. I said "This guy, when he is talking so much about honesty and all those things, he must be Mafia."

MR. GARBER: I object and move to strike that.

THE COURT: Don't tell us what you thought about him.

Q At this point did you discuss with him cocaine, or at some point?

A Not that day, because there was a lot of people in his place. I left and I went back to Miami, because

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we still had time.

Q So what did you do, did you come back again?

A I came back, because I was traveling very often to New York for my regular business.

Q Did you come back and did you get a chance to talk to him at this time?

A Yes, I call him and I talk to him. I said I wanted to talk to him alone. He took me to see his new house that he was building, a beautiful place. Then he took me to his apartment. I start talking to him in there that I had been offered -- I acted like I had been offered the cocaine, that I did not have it, for $20,000 a kilogram, and that if he could get me in touch with one of the families or if he was in that business I was willing to do some business with him and sell it. He said that he was not dedicated to do that, but he had a cousin in Connecticut that was in that business, that was a construction superintendent. He told me he was going to check with him. And I left.

Then, he called --

Q You say you left?

A Then his bouncer brought me into New York, left me at my hotel.

Q Did you then talk to Psmares or Veciana about

what was going on?

A No. I never talked to Veciana about our side of the operation, but I talked to Pomares that I had talked with this fellow Tony, and he said he was not doing the thing but that he was going to get me in touch with somebody that will do it. Then Tony called me -- I am not sure if he call me in Miami or San Juan. I think it was Miami because I was staying there most of the time. My relation with my wife was getting worse.

Q Was this your second wife?

A My second wife.

Q You had been divorced from your first wife?

A Yes.

Q When was that?

A I got the final divorce in March 1971.

Q Then you got married again when?

A March 5, 1972.

Q Now, did Pomares say anything in response when you told him about Tony?

A I explained to him of this horrendous thing on television, and he say "That guy must be in a really big business, he must be a gangster." He agreed to the transaction.

Q Did there come a time when Tony introduced you

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to the man he said was his cousin?

A Yes. He called me and said I could come in to meet his cousin. He gave me a briefing that anything I will do to hurt him or doublecross him, that I was going to pay for it. Like the gangster do. He said this is my blood brother, and all those things.

Q Were you then introduced to this man?

A Yes.

Q In --

A In Tony's office.

Q In Tony's office?

A Yes.

Q You went to Tony's office again to be introduced to the man?

A Yes.

Q And what happened there?

A Well, this man, he look very, very tough, like a killer.

THE COURT: Don't tell us he looked like a killer.

THE WITNESS: He look very tough, and he start talking -- do I have to say the words as they said to me, because of the women being present?

THE COURT: We want to know what happened after

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you talked to him.

THE WITNESS: He said instead of me talking so much to give him proof that this was a good quality product.

THE COURT: He wanted a sample?

THE WITNESS: A sample.

THE COURT: All right.

Q Did you tell him the price at which it could be sold? Did you agree with him on a price?

A He agreed, because Tony said at that stage that he was going to get his share from his cousin's, that they were going to give me $23,000.

Q $23,000 for a kilo?

A Yes.

Q Did you discuss with him or what the quantity was that he was going to buy?

A He said they could get 5 kilos at a time.

Q Did you tell him anything about the percentage?

A I told him that I had been told that it was 92 percent, because this was coming directly from the people that make them without mixing.

Q Did you discuss with him when you would give him a sample or where it would all take place?

A Well, I came back to New York, because at that

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time I was getting -- this was becoming a very troublesome thing to have cocaine. I had been retained for distribution in Puerto Rico for Auto-Lite. This thing was in the middle of my legal life. Both Pomares and I had agreed not to do it.

THE COURT: When did you decide to come to New York?

THE WITNESS: A few days later, I don't recall the date now, to give him a sample.

THE COURT: Are we still in July now?

THE WITNESS: Yes.

Q Just let me go back to this first meeting for a moment. Did you tell this man, who had been introduced to you as the cousin, about the code that you would use to discuss it?

A Yes.

Q What did you tell him?

A Well, I told him the same thing that I did with the others, that we had to talk about acres of land, deeds, documents, to make it look we were only talking about real estate.

Q You said you talked to him about a sample. Where did you have a sample from?

A From the previous -- from this second shipment

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I had kept a sample in one of the lights of the apartment house. Aw a matter of fact, I did not keep it. It was Pomares he wanted to put it in one of those switch lights in the apartment.

Q Did you unscrew it?

A You unscrew it. Then you took that one from there and gave it to him in a little plastic bag.

Q How did you leave the office of Tony where you met the cousin the first time?

A The first time, this cousin, which happened to be an undercover agent, after that he took me to the airport. It was raining. Took me to get the Eastern Airlines Plane to Miami.

Q Did you know he was an undercover agent at the time?

A No, I did not.

Q Now, during the ride to the airport did you try to impress him with --

A Yes. I tried to make him think that we were kind of a Cuban Mafia; he was Italian Mafia.

Q Was there any other conversation?

A No. He was acting with me and I was acting with him. We were two actors, each one playing a role.

Q Now, after this meeting with the cousin did you

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talk to Veciana and Pomares about the meeting with the cousin?

A I did not have anything to talk with Veciana in regard to that, for the simple reason that Veciana will accomplish his share of the situation. This was a trouble between Pomares and me.

Q Did you talk to Pomares about it?

A Yes. I told him about this man. I also told him that I was worried this man could kill me at the time of delivering the narcotics.

Q Did you talk about how much he was going to take?

A I told him that he wanted 4, and that I had sold him the idea that I was going to talk with these people that had the cocaine, because he wanted 5 kilograms paid and 5 on consignment. I told him that these people will not agree to that. We did not have any other place where to sell it. So it was just a matter of waiting from the 5 to the other 5.

Q Then some time later, a couple of weeks or so, did you come back to New York and again meet with the cousin?

A Before that he look at his sample. I came to his cousin -- I met with his cousin at the Taft.

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Q Let's go slowly here. You came back, and there was a time you gave him a sample.

A Yes.

Q You gave the sample to whom?

A To the undercover agent.

THE COURT: The cousin?

THE WITNESS: Yes.

THE COURT: The cousin. You did that at the Taft?

THE WITNESS: At the Taft. I gave it to him and he put it --

THE COURT: What happened after that?

THE WITNESS: He put it on the table and he went like this on the light (indicating), "Good stuff, good stuff."

Then the next day he call me and we went to have dinner at the Francesco Restaurant.

Q Just one moment. Where had you kept the sample when you came to New York?

A I had a Q-tips box.

Q And the sample was where?

A Inside the Q-tips box.

Q And he came over to the Taft and got the sample, is that right, the cousin?

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A Yes.

Q What happened then?

A We went in another Cadillac. The previous one was older, the one that took me to the airport. This was a 1970 Cadillac.

Q Where did you go?

A He got that sample and he put it on the ashtray. I said "This man must be crazy to put that thing in there."

Then from there he went to the Francesco Restaurant in the 90's and we had dinner. He make me eat a lot of Italian food that I didn't like. I just wanted to make him, you know, don't feel bad. Because everything he talk about was in Italian.

THE COURT: What did you talk to him in?

THE WITNESS: Half broken English.

Q Did you talk to him about increasing the amount of cocaine he had agreed to buy from 5 kilograms?

A He came and said he had a colored friend of his that he was going to give two kilos to him, and he was going to make $2,000 on each.

Q So the total now was 7?

A 7.

Q Did you tell him about any delay in getting him the stuff?

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A Well, he told me that I had to hurry up because he had obtained this money from the people in Harlem and they were getting nervous thinking that he had stole the money. I told him that this was not an airlines that had a schedule to be met. As soon as that thing arrived and was prepared I was going to bring it to him. They were calling me many times in Miami.

Q Now, did you make a plan with him on this occasion while you were at the restaurant, or wherever, about where the deal would take place?

A Yes. We talk in there that it was going to take place at the Taft Hotel. He was going to get a room at the Taft Hotel with one of his friends, and I was going to get a room separate. Also I told him this was going to be brought in by a woman.

THE COURT: Told him what was going to be brought in by a woman?

THE WITNESS: The cocaine.

THE COURT: Told him that was going to be brought in by a woman?

THE WITNESS: Yes.

MR. LITTLEFIELD: May we mark these 6 A and 6 B. The top one 6 A, please.

(Government's Exhibits 6 A and 6 B were

marked for identification.)

MR. LITTLEFIELD: May the record reflect that I am now going to remove envelope 6 A from 6 B. 6 B is a Government lock seal envelope. May the record also reflect that I am now cutting open lock sealed envelope 6 B. I am removing from 6 B a small plastic packet, which I would like to have marked as Government's Exhibit 6 for identification.

(Government's Exhibit 6 was marked for identification.)

Q I show you Government's Exhibit 6, and ask does that look like the kind of package which you handed to the cousin at the Taft?

A Yes.

Q That was the small plastic packet --

THE COURT: You say that looks like what you gave the cousin?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Did you the next day have a telephone conversation with him in which he complained about something, about the sample?

A Yes, the next day he complained, saying that sample was not as good as I had promised him to get, and

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I was very upset because I said, this man, he must not know what he is buying, because I had been told that thing was so pure, and this man had not that type of experience. Like Tony had told me he was selling -- buying from some other people, but not directly from the factory. He did not know what was good cocaine. I told him if he didn't want to do the deal, remembering what happened to The Midget with the man the first time. I said this man is going to come to me when I have all those kilograms and he is going to say that this is no good, and he going to take it away. I said "If you don't want to make the deal, forget about it."

THE COURT: You had this conversation where you told him to forget about it?

THE WITNESS: "If you don't want to make the deal you can forget about it."

Then Tony called me again.

Q And what did he say?

A He told me -- he start saying that he believe what I say, and all that, to continue the transaction.

Q Was the outcome of this that they were going to take it as is?

A Yes.

Q Now, did you then go back to Miami?

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A I went to Miami. I don't recall exactly the date because during those days I make three or four trips here to New York, and one to Detroit also. I met Veciana at my apartment. I was staying, those days, at the Italian Village.

Q When you went to Miami you were staying at the Italian Village?

A Yes.

Q Now, did Veciana tell you whether or not the cocaine had arrived?

A He told me that he had received a call from New York with a message from Bolivia, and that he had to come to New York to talk with somebody. When he came in here it was a letter sent by this diplomat advising him that it was going to take about five more days for him to come. And he was angry because he had to come all the way from Miami to New York to get that letter, because they did not want to deliver the message on the telephone.

MR. GARBER: May we have a date as to this conversation, please?

THE COURT: As best you can, do you recall when Veciana came to New York?

THE WITNESS: I don't know if he came to New York.

THE COURT: When did you have this conversation

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that he was annoyed?

THE WITNESS: It was about July 9, July 10.

THE COURT: About July 9 or 10?

THE WITNESS: Yes.

Q Would it refresh your recollection if I showed you some records from the Taft as to when you would have been at the Taft?

MR. LITTLEFIELD: We should mark these first, your Honor.

THE COURT: Yes.

MR. LITTLEFIELD: Mark them all as Government's Exhibit 7, please.

*** (Government's Exhibit 7 was marked for identification.)

Q Does this refresh your recollection as to when you gave the sample to the cousin?

A He had told me --

THE COURT: Look at the dates now. The question is can you tell by looking at those records about when you gave the sample to the cousin.

THE WITNESS: When did I Give the sample to the cousin?

THE COURT: That is right.

THE WITNESS: It was in the area of July 16.

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THE COURT: July 16?

THE WITNESS: Yes.

Q Now, is that also about the time you had this conversation with Veciana that you just described?

A Yes.

Q Now, did there come a time when you spoke to Veciana and he said that the stuff was ready to arrive or it had arrived?

A Yes. He told me, after I came back, even thinking it was going to be later. I was surprised when I arrived in Miami, after he had told me the five days, he said he has already the cocaine. I said "How come you got it?"

He said "I got a call from the motel the night before last, and the man came here in an automobile and delivered me the cocaine." He said "I am going to show you how that cocaine came." Because all of us three, Pomares, Veciana, and myself, were wondering how that thing could go into the country so easy.

Q Did Veciana tell you how it did come?

A No. He did not himself. At least if he knew he did not tell me. He told me about the diplomats only.

THE COURT: How long after you delivered the sample and went back to Miami did Mr. Veciana tell you

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the cocaine arrive last night?

THE WITNESS: Just as I arriving to Miami. That would be July 18.

THE COURT: July 18?

THE WITNESS: About July 18.

Q You got to Miami after the 16th?

A Yes.

Q You said he had told you it arrive a few days before. Is that right?

THE COURT: I thought he said last night.

THE WITNESS: The last night or the night before. I think it was one or two days before he talk to me. Then I call Pomares to San Juan. Pomares said that he could not make it. He had some work to do there, and he could not make it until Friday.

Q So the 16th of July, which I believe was a Monday. Is that correct?

A I talk to him, I think it was, the 18th, to Pomares.

Q And the 16th was a Monday, if I am correct. The 18th would have been a Wednesday, so you would have talked to Pomares on a Wednesday.

A Yes. And he cold me he could not make it until Friday night. He was going to arrive Friday night or

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Saturday morning.

Q Did you then tell this to Veciana?

A Yes. I notified Veciana that Pomares was not coming until. I had already made reservations for Pomares on the Amtrak, and I have to change them two times.

Q Can you explain what that means?

THE COURT: Reservations from where to where?

A From Miami to New York.

Q Did you have discussions with Pomares about how the cocaine would be brought?

A The only way that you could bring that was in an automobile or by train, because on the plane they search or they open the bag for you or you are going to be gambling with the baggage in the cargo.

Q Did you in fact earlier buy a ticket for Pomares on Amtrak?

A Yes.

Q From Miami to New York?

A Yes.

Q And that was for an earlier date. Is that right?

A It was earlier because -- I make the reservation thinking that he just needed one day, and the next day leaving.

Q And eventually was the reservation changed?

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A Yes, it was changed for July 22, which was a Sunday.

MR. LITTLEFIELD: Mark this as Government's Exhibit 8, please.

(Government's Exhibit 8 was marked for identification.)

Q You probably won't recognize it that this is the ticket, but is that an Amtrak ticket?

A Yes, I recognize this because I pay for it.

Q Now, did you have a conversation with Veciana after you talk to P!mares when he told you he could not come until Friday night or Saturday?

A Well, I told that to Veciana and he agreed he was going to keep the cocaine until the day that Pomares will arrive.

Q And then would you meet somewhere?

A We had met at the apartment that I was staying, at the Italian Village.

Q At the Italian Village?

A Yes.

THE COURT: Was this a different apartment?

THE WITNESS: No, the same apartment where was the cocaine.

THE COURT: The same apartment you testified

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about a while ago.

THE WITNESS: Yes.

Q Was it agreed you would meet there that S.turday?

A When Pomares told me he was going to arrive Saturday, I call Veciana and told him it was going to be Saturday, and we all get together Saturday morning.

Q Now, did there come a time when Pomares arrived?

A I beg your pardon?

Q Did you learn that Pomares had arrived in Miami at some point?

A Yes, I learned because he arrived Saturday morning on the plane. He got an early flight from San Juan.

Q So this would be the 21st?

A The 21st.

Q Of July, 1973?

A Yes.

Q And what happened when he arrived in Miami?

A He went to my apartment and we call Veciana. First of all, we went to have breakfast together. Then we come back and we call Veciana, and Veciana arrive there and he told us how fast this diplomat had worked it, and he also was amazed of the ways that cocaine had come.

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How I can say, the containers, where they brought it to kilograms.

Q Did he tell you about the containers?

A Yes. He explain it to me because he brought in with the two bags a sample.

Q What did he explain to you?

A It was a very heavy transparent plastic. It had on both sides leather and it was handsome, plastic, to make it real strong. They were about this wide (indicating) and about this size.

Q Was it like what we might call --

A Like a big cigar.

Q Shaped like a cylinder?

A Shaped like a cylinder.

Q A tube I guess is a better word.

A He brought just one sample.

Q Did he discuss with you, Veciana, how these tubes had been brought into the country?

A He told us these people must bring that thing through the diplomatic ways. He said that this is too big to be brought in any other way, because they search every person in the airport. Again over there in that conversation he emphasized that he was worried of our end of the operation.

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Q Did you discuss with him and Pomares how you might be able to test quality of the cocaine?

A No. We discussed over there the previous shortage and this Interpol agent in Bolivia had told him that he could not do anything about it, because he was buying from different people for him. The only way it was that he weighed it. But these 10 kilograms were correct. It was exactly 10 kilograms.

Q Did you discuss with him testing the percentage?

A No. At this time I saw that this man did not know what he was talking about. I had faith that it was 92 percent like that analysis I saw the first time when the 5 kilograms came.

Q Did you discuss whether you could boil it?

A Because of this situation that I had with this gangster, and I wanted to prove to him that it was good, I asked Pomares how they tested cocaine. Pomares told me "I don't know. The Midget told me one time that it was a good cocaine, because he put a thermometer and it blow out."

I asked Veciana, and Veciana said, "I heard you get an aluminum piece of paper and you put a light under and if it start bubbling, the cocaine, and it terminates, it disappears, it is good cocaine. If it

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stays in particles it means it has been adulterated."

We did this ourselves, Pomares and me later.

Q Did Veciana tell you what he had done with the tubes of cocaine?

A No. He sent one tube.

Q But when you first met at this Italian Village after Pomares had arrived on Saturday morning, did he tell you whether the cocaine was still in the tubes or what he had done with it?

A No. He had already put the cocaine in two plastic bags that are used in the garbage disposal, those green plastic bags. And then he had the plastic bag inside those Public supermarket shopping bags. Then he had that tube that he sent us in a sample of.

Q He told you he had taken it out of the tubes and put it in the bag?

A Yes, that he had put it in there.

Q While you were having the conversation did -- while the three of you were having a conversation at the Italian Village, did anything happen?

A When we were ready to transfer the cocaine from Veciana to the apartment --

Q Did Veciana tell you where it was at that time?

A In his automobile outside in the parking place.

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Q Where in the automobile?

A In the trunk it must be.

THE COURT: You don't know?

THE WITNESS: I don't know.

THE COURT: You know it was in his car?

THE WITNESS: The first time it was in his trunk.

THE COURT: All right.

Q And did something happen while the three of you were there that morning?

A Yes. We received an unexpected visit of one of my associates in Miami, and his son-in-law. They happen to stop there to see how that swimming pool has been built. I had told him Friday I was going to be very busy Saturday and I wasn't going to be able to take care of him. We got upset, because he was going to be there for a long time talking. As soon as Mr. Lopez and his son-in-law arrive there, both Veciana and P!mares acted like they had to leave, like they were just on a visit there and both left together.

Q You say something about a swimming pool. What has that got to do with it?

A The reason why Lopez had arrived Saturday there is that he was building 31 units of apartments, and he went to see how his -- his son-in-law is a general

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contractor. They were coming to those apartments to see how they made the swimming pool area with the balconies and the concrete, and everything, to do it exactly on those 31 units like the Italian Village.

Q In fact, did they just arrive at the door, or did you see them through the window?

A We saw Lopez through the window, because we opened the balcony. We knew way ahead, because in that building you have to ring a bell, and then you have to go through the hall to the apartment. He just arrive and put his car in front of my balcony. I said, "Here dome Lopez now."

Q Was the apartment on the ground floor?

A Yes.

Q And the balcony was still on the ground floor?

A Yes.

Q The balcony was practically on the ground or not?

A Yes, the balcony was -- like we can say just kind of a fence just from stopping the person from going inside the apartment.

Q The apartments above had real balconies that hung out?

A Yes, the second and third floor, yes.

Q Now, did you say to Pomares and Veciana that you saw your friend coming?

A Yes. I said, "Look, Lopez is coming now here." Pomares had not been very good friend of Lopez at all never, and he make some kind of remarks. As soon as Lopez and Mr. Figueroa arrive there and talk for a few minutes, they left.

Q Who is Mr. Figueroa?

A Mr. Lopez' son-in-law, the general contractor.

Q They both came. Is that right?

A Yes.

Q Did you change the subject when they arrived?

A Of course, we change the subject. I start talking. Mr. Figueroa, he is an airplane pilot, those big four-motor planes.

THE COURT: That is not material.

Q Did you change the subject of your conversation with Veciana and Pomares to something else?

A Yes.

THE COURT: He already answered that. He said he did.

Q What subject did you change it to, if you remember?

A I don't know.

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Q During the time that Lopez and Figueroa were there talking to you, you were alone with them at this point, right?

A Yes.

Q Did you get a telephone call?

A Yes, I had a telephone call.

Q Who was that from?

A From Pomares.

Q And what was that about?

A He was asking me if that stupid Lopez and his son-in-law had left. I told him that they were over there. I said, "No, no, no, not yet."

Q Did they eventually leave?

A They left 25 minutes later, because we start talking about airplanes there and we could not finish.

Q After they left did --

A I call Pomares at the Crossway Inn and told him that the apartment was ready. He came in.

Q He came back?

A He came back, and he had already on his car, in Pomares' car, a rented car -- I think it was a Polara, Dutch Polara. He had the cocaine in his car already.

We left the car there, his car.

Q We have to go step-by-step. He came back --

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and told you what?

A That the cocaine had been transferred from Veciana to him.

Q Did he tell you at what point that had taken place?

A Well, I don't recall at this moment if he said for sure, but I think he told me it had been transferred at the parking lot.

Q And did he say whether it was in the trunk of his car, or where it was?

A It was in the trunk of his car.

Q And where was his car at this point parked?

A It was parked right in front of my balcony, next to my automobile.

Q Did Veciana come back?

A No, I did not see Veciana after he left.

THE COURT: All right, we will take another short recess, gentlemen.

(Jury excused.)

THE COURT: I wanted to find out from you how much longer do you think you will be on direct?

MR. LITTLEFIELD: Possibly half an hour, 45 minutes.

THE COURT: Because it is still a bad day, and

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I am worried about this jury and I don't want to keep them too long.

MR. BOITEL: Can we finish direct?

MR. LITTLEFIELD: It will be tough for me to finish because there are a number of things I want to check tonight.

THE COURT: I would not hold you to that, ov course, but if we could get over most of it I would be grateful.

MR. LITTLEFIELD: The other thing, your Honor, is that Mr. Gordon has told me that I have a Court of Appeals argument that I have to argue tomorrow morning at some point. I would like to call the Court of Appeals now and see if I can get the first one at 10:30, which means I can start and then run right down.

THE COURT: Why don't you get it the last one on before lunch hour. I would rather have you put at the end.

MR. LITTLEFIELD: All right, your Honor.

MR. GARBER: Your Honor, in view of the possibility that this matter might appear to carry over, could I impose upon your Honor to possibly call one of our District Judges for me?

THE COURT: Surely, I will be glad to. No use

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calling him now. Give me his name in the morning and I will call him. Will you do that?

MR. GARBER: Yes.

THE COURT: The name of the case, too.

(Recess)

(In open court, jury not present.)

MR. GARBER: Your Honor, I understand that a portion of the Government's proof will consist of testimony, I believe, of Mr. Bruno, perhaps another agent, corroborating the delivery.

THE COURT: Could we take this up afterwards? I would like to get as far along as we can. I will be glad to take it up after this.

MR. LITTLEFIELD: Your Honor, I just came back from the Court of Appeals, and I could put it off until twelve.

THE COURT: All right, we will work that out.

MR. BOITEL: Your Honor, this gentleman is not going to be a witness?

MR. LITTLEFIELD: All right, you can go. You can come back in 25 minutes and help me with the stuff.

(Jury present)

THE COURT: You may proceed, Mr. Littlefield.

MR. LITTLEFIELD: Thank you, your Honor.

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(Last question and answer read back.)

Q After Pomares came back to your apartment, what did you do, you and he? What did you and he do at that point?

A We left the cocaine in his car.

Q In the trunk of his car?

A In the trunk of his car, and we took my automobile and went to buy a thermometer. Also we went to buy the plastic bats in which we were going to put the cocaine. And we had to stop at the hardware store to buy masking tape for the bags.

Q Did you also buy any food?

A We bought at the Public some food, because I had the refrigerator empty.

Q Do you remember where you went to buy the thermometer?

A Walgreen's on 7th Avenue of the Northwest. I pay $1.07 for it.

Q Did you return in your car then with these goods that you purchased?

A When we had done the purchase of the food and the thermometer, we came back on LeJune Road.

Q You returned to the Italian Village apartment?

A Yes. I start unloading my package of my bag of

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food. You have to go in and open the door with a key, because this is an apartment that is completely locked. I went ahead and I found that Pomares had put the two bags of the cocaine inside the balcony. I was so upset, because a policeman was living on the third floor of that apartment; that I got so nervous that I said, "You must be crazy. We are not handling any normal thing."

He said "Don't worry." He opened up the slide door and put in the two bags from there. Then we remove a table from the living room and took it to the bedroom just in case somebody will come to interrupt, like Mr. Lopez had done at that moment. Then he could have the table inside there with the cocaine and he could be working and he could lock himself in, and I could talk with the people just in case.

Q How big is the apartment?

A It had one bedroom, a living room and a kitchen and bathroom.

Q And after you moved the table to the bedroom, did you get out the scale?

THE COURT: Don't lead him.

What happened next?

THE WITNESS: We move the table there, the two package, and that bag that was there as a sample.

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We pull out the stove and get the scale out of there and we had some food before going into there to putting the cocaine in that thing. Then he start doing it himself alone.

Q Wait just a second. You got the scale from behind the stove?

A From the cabinet.

Q And then what happened? What happened next?

A This scale has only 500, or half a kilo only. We had to put two half kilos to make 1 kilo. He was loading and we were unloading there. We were sure -- I told him that I wanted to be exactly the amount of 1 kilogram in order to avoid any trouble with this gangster. That thing start make me feel, you know, like if I was drunk because the dust was going. And I put a handkerchief here and he did the same. I was sweating.

Q This is the cocaine?

A Yes.

Q How did you go about exactly taking it from the shopping bags to put into the smaller bags? Did you reach in with your hand?

A We use a plastic cup that was in there on the room, on the kitchen. I was loading from that plastic cup to the plastic bag half a kilo. When we had the half

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kilo we set it down, we got another bag, another half kilo, mix it together, roll it and put it with masking tape.

Q Did you try to test the quality of the cocaine?

A Oh, yes. The first thing before doing anything we took the thermometer and put the thermometer inside the cocaine, but that did not work at all. It was nothing. What we did, Pomares and me, we try with the metal paper the match, and that thing went bubbling and disappear. So I said now I can show this man that I am giving him something good.

Q Now, how many packages, if you remember, did you prepare?

A We prepare 10 package. The total amount was not exactly 10 kilograms, because I took a little sample to take out, plus something that was left on the inside of those plastic bags. I think we lose 25 grams on the whole thing. You can say it was 10 kilograms less the dust that went to the rugs there and the scale.

Q Did the plastic bags when you were measuring, did they weigh anything? Did you contract for the possible weight of them?

A Yes, we counted that it weighed, I think it was, 5 grams. So we had to put 5 grams more in the bag. I think the plastic bag was 5 grams. So we had to put

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5 grams more in the bag. I think the plastic bag was 5 grams.

Q Now, at this point had you discussed with Pomares what you were going to do with the cocaine after you had completed packing it?

A We had been talking how we were going to handle this thing. He was leaving on the train and I was going to leave on the plane the same day. I make reservations, Eastern Airlines, to LaGuardia. He was leaving Sunday in the morning on the train to New York. I had told him that I had already made reservations at the Taft Hotel of 2 rooms. In the room I was going to deal with this man, I wasn't going to have the cocaine. I wanted that he comes in with a key that I was going to give him, and put it in the other room.

Q Who comes in?

A Pomares.

Q You have to explain what you and Pomares said about how you were going to make the transaction.

A I am talking about Pomares.

Q He is going to bring the cocaine to New York on the train?

A Yes.

Q And you were flying up?

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A Yes.

Q What day would this have been?

A The 22nd.

Q That was a Sunday. Is that right?

A Sunday.

Q The 21st, the day you all met?

A Yes.

Q And the people came in?

A Yes. He took the 7 kilos with him out of the apartment and he kept the 3 kilos, already preparing one kilo package plus the scale, in the kitchen cabinet.

Q Did you discuss with Pimares what would happen when he arrived in New York and when you arrived in New York on Sunday?

A Yes. We were organizing how we were going to work that thing.

Q Now, what did you each say on those arrangements?

A The arrangement, first of all, he was not arriving Sunday, he was arriving Monday, the train takes a longer time than a plane. He left Sunday morning and arrived Monday about 11:30 or 12 o'clock, because the train was late an hour and a half.

Q You were supposed to arrive when?

A I was supposed to arrive Sunday night because

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I wanted to talk with the informer and clarify my position in regards to the undercover agent.

THE COURT: You did not know he was an undercover agent. You said you wanted to talk to this man about his cousin. Is that right?

THE WITNESS: To Tony about his cousin.

Q But with Pomares, what else did you and he discuss on how he would get you the cocaine once he got to New York?

A Well, it was simple. He was going to call me. First of all, we would say you are going to stay at the Americana Hotel, I going to stay at the Taft. First in the morning I thought of giving 3 kilos and then 4, after he paid me for the 3. I did not want it if he was going to steal from me he just take 3 kilos.

Q So what did you agree with Pomares?

A I told POmares that he will go with this bag to the room next to my room, and I give him a key.

Q How had you given him a key?

A At the Americana Hotel when he arrived from Miami.

Q You told him you would meet him at the Americana?

A No.

THE COURT: I think we are a little confused

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here. I think the jury and I are still in Florida when you are making arrangements.

As I understand, the arrangements were that he was taking the Amtrak train to arrive Monday and you would fly up Sunday.

THE WITNESS: Right.

THE COURT: Where would you stay?

THE WITNESS: Taft Hotel.

THE COURT: He would stay where?

THE WITNESS: Americana Hotel.

THE COURT: All right.

Q How many rooms were you going to reserve at the Taft?

A Two.

Q How were you going to get together with him when he got to New York on Monday?

A He told me he was going to stay at the Americana --

Q We want to know the plans you made before you got to New York.

A He was going to arrive at the Americana Hotel and I was going to call him and tell him when he had to take this cocaine to the Hotel, not in the room I was sleeping but in the room next to me.

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Q Did you tell him you would give him a key to that room?

A Yes.

Q You would meet him somewhere?

A Yes.

Q You told him you would come to the Americana?

A I told him, yes.

Q Back to Miami again, after you packaged all these packages of cocaine, what did you do with them specifically in terms of getting ready to bring them on the train?

A After what?

THE COURT: Wait a minute. You packaged these things and the question is how did the cocaine go from where it had been packaged to Amtrak, what was your plan about that?

THE WITNESS: When we finish loading or preparing the 10 kilograms there, Pomares went out and bought the bag.

Q The suitcase?

A The suitcase. He put 4 kilograms in a J.C. Penney box and 3 kilograms in a Polaroid Camera container, to the left and to the right.

MR. LITTLEFIELD: May we mark this as

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Government's Exhibit 9, the suitcase.

(Government's Exhibit 9 was marked for identification.)

Q First of all, I want to show you Government's Exhibit 9, Mr. Barres. Does that appear to be, from your memory, the size and color suitcase?

A Yes.

THE COURT: Where did you firse see that suitcase?

THE WITNESS: When Pomares bought it in Miami, the day that we put the cocaine in there.

THE COURT: Were you with him when he bought it?

THE WITNESS: No, I stay in the apartment.

THE COURT: You first saw it when?

THE WITNESS: When it was in the apartment.

THE COURT: When he brought it to the apartment, all right.

Q What happened then, you proceeded to pack the cocaine in it?

A He packed the cocaine.

MR. LITTLEFIELD: May the record now reflect I am going to cut open the seals on this Government Exhibit 9 for identification.

Q Now, you say you packed -- how many packages

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altogether?

THE COURT: He did not say he did. He said Pomares did.

A The Polaroid -- see if this is a Polaroid box.

Q It says Polaroid on it.

A Then on this side I think he had a J. C. Penney box with the 4 bags inside.

Q How many were in the suitcase altogether?

A Seven, three and four.

Q That is J. CV Penney on the bag.

Is this how you packaged -- this would be a Government seal that has been put on it, but was this how you packaged the cocaine?

A This was packaged that way, and later the agent tested each one of them in the hotel, and he had to put more masking tape.

Q So originally you didn't have as much masking tape around it?

A No.

THE COURT: It was that kind of package?

THE WITNESS: Yes.

THE COURT: What was that package supposed to represent?

THE WITNESS: One kilogram of cocaine.

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THE COURT: I think you had better mark these things.

MR. LITTLEFIELD: Fine, your Honor. I will do that.

I will mark the J.C.Penney bag as Government's Exhibit 10 for identification.

THE COURT: Why not make it 9 A. Wouldn't that be better?

MR. LITTLEFIELD: Yes, your Honor.

(Government's Exhibit 9 A is marked for identification.)

MR. LITTLEFIELD: May the record reflect that that J. C. Penney bag -- if the suitcase were down on the table to be used, the J. C. Penney bag would be on the top part of the suitcase.

May we mark as Government's Exhibit 9 B, the Polaroid box.

(Government's Exhibit 9 B was marked for identification.)

MR. LITTLEFIELD: May the record also reflect I removed one of these packages of white powder from the Polaroid box as I took it out.

THE COURT: Mark that one as 9 B-1 to show it came out of the box.

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MR. LITTLEFIELD: May the record also reflect that was lying on the bottom part of the suitcase.

(Government's Exhibit 9 B-1 was marked for identification.)

MR. LITTLEFIELD: Your Honor, shall I mark the other packages?

THE COURT: Yes. You have opened it. I think you had better mark them all.

(Government's Exhibits 9 C, 9 D, 9 F, 9 G, and 9 H, were marked for identification.)

Q Now, did you take a sample while you were down in Miami from all of this?

A Yes.

MR. LITTLEFIELD: May we mark as Government's Exhibits 10 A and 10 B those two lock sealed envelopes.

(Government's Exhibits 10 A and 10 B are marked for identification.)

MR. LITTLEFIELD: May the record reflect I am removing Government's Exhibit 10 A from Government's Exhibit 10 B, which is a lock sealed envelope, which is presently sealed shut, and I am cutting open 10 B. I am removing from 10 B a plastic package containing -- I can't see what it contains. That should be marked as Government's Exhibit 10 for identification, please.

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(Government's Exhibit 10 is marked for identification.)

Q Mr. Barres, I show you Government's Exhibit 10. Does that look as if it were the kind of package that you put the sample in?

A Yes.

Q Where did you carry the sample?

A In the same Q-tips box that I did before.

Q Now, after you loaded the three packages altogether into the suitcase, or after Pomares had loaded them, I am sorry, what did you do with the other three bags?

A Pomares put the 3 kilograms in the cabinet next to the stove, plus the scale.

MR. LITTLEFIELD: May we mark this package as Government's Exhibit 11 for identification, please.

(Government's Exhibit 11 is marked for identification.)

MR. LITTLEFIELD: May the record reflect that Government's Exhibit 11 is a brown paper bag, what appears to be a brown paper bag, and I am going to cut off Government's Exhibit 11, which is now sealed with tape. Also, your Honor, the top of the bag is stapled. It seems to be dust, your Honor, so I will leave them in

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the bag. There are three of these.

THE COURT: Show them to the witness.

MR. BOITEL: We will concede the contents of that.

MR. GARBER: Certainly.

THE COURT: You concede the contents?

MR. BOITEL: Yes.

MR. GARBER: Yes, your Honor.

Q Are these the bags you put them in, or the bags the chemist put them in when they were analyzed?

A I am not familiar with them because they were --

THE COURT: Repackaged?

THE WITNESS: Yes.

MR. BOITEL: Will the whole thing be marked as one exhibit, your Honor? Is that it?

THE COURT: If that is agreeable, gentlemen.

MR. GARBER: Yes, your Honor.

MR. BOITEL: Yes, your Honor.

THE COURT: Mark it as one exhibit.

MR. LITTLEFIELD: Containing three packages.

THE COURT: All right. Thank you, gentlemen.

Q Now, after this was all packaged, as you just described, and after the 3 kilos were put in the space behind the stove and the scales, what happened next?

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A Well, after that he took the baggage with him and left the apartment.

THE COURT: He left the apartment?

THE WITNESS: Yes.

Q Do you know what time his train left?

A The train?

Q Yes?

A The train was Sunday morning, but he left the apartment to go to the Crossway Hotel where he was staying.

Q He took the suitcase with him?

A Yes.

THE COURT: So he left on Saturday. is that right?

Q Is that Saturday?

A Yes.

Q Then did you stay in the apartment with the safe?

A Yes -- no, I did not stay in the apartment that night. I went out. I have an idea I did not stay there. I think I had a date that night.

Q And you and Pomares agreed to meet in New York according to the plans you just described?

A Yes.

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q Q The next day did you have anything to do with Pomares getting to the train station, or did he get there under his own steam?

A I don't know what he did, but he had told me he was going to take a taxicab to take him to the train station.

Q And then you flew. Is that right?

A Then I flew in the afternoon. I arrive here at the LaGuardia airport.

THE COURT: What did you do when you arrived?

THE WITNESS: Well, I had already an appointment for dinner with the informer.

THE COURT: Don't tell us anything else. You had an appointment with this man.

THE WITNESS: Yes.

Q With Tony. Is that right?

A Yes.

THE COURT: Where did you meet Tony?

THE WITNESS: At The Cattleman.

Q That is a restaurant in New York?

A Restaurant in the Taft Hotel.

Q You were staying at the Taft Hotel?

A Yes. I explained to him the fact that I was worried that this cousin of him did not know much about

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this, and I wanted to make sure that this was -- I was giving him what I had told him and I did not want any change. I said, "You will be the person that will guaranty me the transaction," and he agreed.

Q Let me show you two items from the Hotel Taft, which we will mark as 7 A and B.

MR. GARBER: Counsel, are these being offered to substantiate the fact that he stayed there?

MR. LITTLEFIELD: Among other things.

MR. GARBER: We will stipulate that. At least I will on behalf of Mr. Veciana.

MR. BOITEL: I will as well.

THE COURT: Mark them for identification. No need to offer them due to your stipulations.

(Government's Exhibits 7 A and 7 B were marked for identification.)

MR. LITTLEFIELD: May they be marked in evidence, your Honor?

THE COURT: Just as well.

(Government's Exhibits 7 A and 7 B are received in evidence.)

MR. LITTLEFIELD: I will offer 7 in evidence, then. That is the earlier Taft bill.

MR. GARBER: Agree to its admissibility.

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THE COURT: All right.

(Government's Exhibit 7 is received in evidence.)

MR. LITTLEFIELD: 7 C I will also offer in evidence.

MR. GARBER: No objection.

THE COURT: All right.

(Government's Exhibit 7 C is received in evidence.)

Q Now, after you arrived in New York you met with Tony at the Cattleman?

A Yes.

Q Did you get in touch with --

THE COURT: Now please don't lead.

You say you had dinner with Tony, and you told us what you talked to him about. What happened after that?

THE WITNESS: After that, I am not quite sure, but I think I had a call from his cousin talking that he was coming the next day. I don't recall that well.

THE COURT: Well, if you don't recall, don't tell us.

Q Were arrangements made --

MR. BOITEL: I object to leading, your Honor.

THE COURT: Yes. Be careful.

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Q Just tell us what happened from here on in.

A What happened, the next day I had a call from his cousin, who told me that he was ready and I told him at 12:30, but this train was getting late. So I ask him he had to wait for a little bit more of time.

He call me the second time and I told him to come into my room because I want to show a sample of the cocaine that I had brought in.

Q You are talking about the cousin?

A The cousin, yes. I did not talk at the Cattleman any more with Tony.

When he came upstairs, I start telling him about the quality, telling him that he did not know how that thing was good, and all that --

Q Wait a second, we have to go step-by-step now. Did you ever meet Pomares the next day?

THE COURT: I would rather have the witness state it.

You stated the cousin came and you were showing him the sample. Is that right?

THE WITNESS: Yes. First of all, I check on the train. The train was late about an hour and a half. I went to the Penn Station. When I arrive at the Penn Station, the train had already arrived. I took a taxi and

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went to the Americana. Pomares was in the line there waiting to be registered in the hotel. I gave him copy of the key of the room next to mine.

Q At what hotel?

A At the Taft Hotel. I told him whenever he had a chance, go over there and leave it over there and call me because it was late.

Q In the meantime this cousin was very excited, calling me. I told him to come upstairs. I gave him a sample and start giving him instructions for him because I thought he did not have any experience, and I tried to act with him like I knew what I was doing.

While I was talking with the cousin in the room, Pomares call me on the telephone and say, "I already put the stuff in the other room."

So then I ask this fellow, the cousin, "Do you have the money?"

He say, "I have the money but it is at the" -- the Hotel in front of the Taft. It belongs to the Americana people also. 51st Street on Seventh Avenue. City Squire. He said "I have the money there." I am not going to stick my neck in two operations, because I want 3 kilo the first time and 4 kilo the second time.

At least he was going to steal 3 kilos and not

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the 7, because the 3 kilos we could recover and pay to Veciana like we had agreed before.

He was kind of nervous. So I said "O.K., I am going to give you the 7 kilos. You take it with you and then you pay me later."

I went outside, grab a key, the key I had, went into that room, pick up the baggage and put it into the room.

Q I am sorry, when you talk about rooms, which room, the room you were sleeping in?

A I had two rooms. One room that I never slept in it, the other room that I was sleeping in. I told Pomares to put the package in the room that I was not sleeping in.

When the cousin came and I agreed to deliver the 7 kilos to him, I went to the room that I was not sleeping, not inside, because I did not want to show him I had a key to that other place. I said you wait for me and I would get it.

THE COURT: So he stayed in your room and you went out in the other room?

THE WITNESS: Yes.

Q Did he know about the other room?

A No. He saw that I had -- before I had told him

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I had another fellow, a girl that was bringing the cocaine.

Q But he did not know you had another hotel room?

A No, he did not know I had another room at the hotel. I went outside very quietly, open the door of that room, pick up the baggage, and close the door very quietly so he could not listen that it was just next to him. I went into the room with this baggage and I make him check each one of those things to be approved by him.

He start spilling in the basket there, and proving that thing. I remove the basket and wash it --

Q I am sorry, I am confused. What happened, you showed him the suitcase?

A Yes.

Q You opened the suitcase?

A He opened it and he tested each one of the package.

Q How did he do that?

A He was opening, going like this, (indicating) and it was spilling on the floor, on the basket. Then I gave him masking tape to cover the hole that he had opened in there.

Q So you wrapped more masking tape on it?

A Yes, for the place he had open the hole in each

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one of those. Then he took out the baggage, you know, and when he opened the door and there was all the police there with the shotguns and this man start saying "Who put this baggage in my hands?" He said "Bring me a lawyer, bring me a lawyer." I thought it was a dream.

Q Which man kept saying "Bring me a lawyer, bring me a lawyer"?

A The cousin. I saw a big man with a shotgun and I thought it was a stickup. Later came the police with those suits like the umpire suits, and that was it.

THE COURT: I think this will be a good time to stop.

Ladies and gentlemen, it is now twenty after four, and the weather is bad and I will excuse you until ten o'clock tomorrow morning. Lots of luck to you. I hope the storm is over and the roads are clear, so you will have no trouble. Please be here promptly, as all of you, I know, tried to be today and most of you were. Remember not to discuss this case with anyone at all in the meantime. You are excused until ten o'clock tomorrow morning.

(Jury excused)

(Witness excused)

MR. LITTLEFIELD: May I make an application?

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THE COURT: Yes. Mr. Garber had an application he wanted to make first.

MR. GARBER: Yes, your Honor. It is my understanding that the Government will offer witnesses in support of the testimony, corroborative of the testimony of his principal witness with regard to the transaction he just testified to. We, at least speaking for my client, and I think speaking for Mr. Boitel as well, would certainly stipulate that these officers, if called, would corroborate the testimony which this witness has given, without the necessity of their actually testifying.

THE COURT: You made the offer. It is now up to the Government to decide.

MR. LITTLEFIELD: I will make them as brief as I can, but I certainly want to call some of them.

THE COURT: It is your privilege, of course.

MR. BOITEL: I was going to say, your Honor, I don't know that it is necessary to keep this stuff around here for the rest of the trial. I am not thinking about the prejudicial effect on the jury. I am thinking that I would rather not have it around myself.

THE COURT: I think it ought to be kept under the table. Could you do that?

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MR. LITTLEFIELD: I will keep it under the table.

THE COURT: I agree with that. I like to do as much of that as possible. Let's keep it under the table.

MR. LITTLEFIELD: With respect to the ruling with regard to Pomares' written statement, Pomares also at the time, prior to the time he made the written statement, made a long and complete oral confession in which he corroborated everything that Barres had said, and also corroborated Veciana's involvement exactly as he did in the written statement.

THE COURT: Who is going to testify to that?

MR. LITTLEFIELD: Agent Pinol, who heard that statement. We will have to redact any references to Veciana, but it is an oral statement. If there is an issue as to suppression I will be glad to have the agents here at 9:30 in the morning and we can have that.

MR. BOITEL: We are getting caught into a distinction without any difference here. At the pretrial conference we had in this case, it had to do with my client's statements at the time of his arrest. I don't think there is any doubt that your Honor's ruling yesterday should apply.

THE COURT: This is a different statement, I

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take it.

MR. LITTLEFIELD: Yes. It was a statement he made orally prior to the written one, your Honor. It is not the written statement which the initial discussion was about.

MR. BOITEL: Your Honor, there is absolutely no doubt that at the pretrial conference, this is exactly what we were talking about. For the Government to come in the back door by some oral statement made practically contemporaneously with the written statement or the later recorded statement the same day, I think it was, I think just breaches exactly what Mr. Bannigan said he was not going to do.

THE COURT: I haven't got the written statement here.

MR. GARBER: Let me further add this: This places me exactly back in the same Bruton situation that the written statement created.

THE COURT: The date is sort of wiped out.

MR. LITTLEFIELD: The date of the statement is July 29, which is when he was arrested. The top date is the date of the typing. Pomares was arrested in Puerto Rico the 29th, and at the time he spoke to the agents, he indicated he was willing to cooperate and made this

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complete statement corroborating the events.

MR. BOITEL: Is this a transcript of a recording? What is it?

MR. LITTLEFIELD: He wrote the questions down and wrote in the answers as it went along. It was not recorded.

MR. BOITEL: With regard to the offer of proof you are now making as to a prior oral statement, what is the difference in time between the prior oral statement and this?

MR. LITTLEFIELD: It was made some time before. This was made after they had been over everything five or ten times to get it exactly right. The oral statement was made right upon his arrest, right shortly after his arrest, when he agreed he wanted to cooperate and tell the Government everything that had happened.

MR. GARBER: But prior to his having counsel?

THE COURT: That is a question on which we might have to have a suppression hearing. This is not the same problem as yesterday. I can see counsel disagree on how much different it is. I suggest you have the agent here at half past nine, so that we can go into it again at that time. I suggest that counsel be here at half past nine, if they want a hearing on it before any

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part of it is used.

MR. BOITEL: May I suggest we have the Court Reporter here who took Mr. Bannigan's statements?

MR. LITTLEFIELD: I have the witness here now in fact, your Honor.

THE COURT: We will take a short recess and then bring them in.

I take it the first thing is whether this was a voluntary or these are voluntary admissions, and that is what you want a hearing about. After that I will consider again the Bruton question and what we discussed yesterday. But the first question is whether it is voluntary, and I will have a hearing.

MR. GARBER: I would hate to see a Bruton situation arising at this juncture of the trial, your Honor.

THE COURT: All right. We will take a few minutes.

(Recess)

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SUPPRESSION HEARING

4:45 p.m.

(In open court, jury not present)

J O H N B R U N O , called as a witness on behalf of the Government, after first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LITTLEFIELD:

MR. BOITEL: May I ask if this agent is going to testify as to statements of my client that he first be qualified as speaking and understanding Spanish?

THE COURT: He will do that.

MR. LITTLEFIELD: Your Honor, Mr. Bruno is the cousin. And after the arrest -- I will ask the questions.

THE COURT: You ask the questions.

Q You were, Mr. Bruno, the undercover agent in this case. Is that right?

A Yes, sir.

Q And you were introduced to a man named Augustin Barres by Tony. Is that right?

A That is correct.

Q And you were introduced as sort of a gangster who was going to sell the cocaine?

A Yes, sir.

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Q You met with him on a number of occasions and played the role of a gangster?

A Yes, sir.

Q On the 23rd of July you were in the Hotel Taft room when the arrest took place. Is that right?

A That is correct.

Q Subsequently that day,Barres at that point did not know you were an undercover agent, but subsequently that day you were brought into him and you revealed yourself to him as an undercover agent. Is that correct?

A Yes.

Q At that point he decided to give a complete statement of what happened?

A Yes.

Q He gave a long statement over a couple of days to Detective Scamardella, which was taped and was written down. Is that correct?

A Yes.

Q What did you do next at this point? Where did you go, what city?

A On the 24th of July we flew to Miami, Florida.

THE COURT: You and Detective Scamardella?

THE WITNESS: It was Group Supervisor, Agent James Edwards, and myself, flew down to Miami.

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Q The purpose of that was because Barres had told you about the stash in the International Airport Village place. Is that right?

A Yes.

Q You went in behind the stove and found the 3 kilos and the scales?

A Yes, sir.

Q With other agents from Miami. Is that right?

A That is correct.

Q Now, what did you do after that?

A On July 28, Group Supervisor Edwards and myself flew to Puerto Rico.

Q And what happened then?

A We were in possession of an arrest warrant for one Ariel Pomares.

Q The arrest warrant was issued on July 26, 1973, by Magistrate Hartenstine in the Southern District of New York. Is that right?

A That is correct.

Q Tnis was flown down to you. Is that right?

A Yes.

Q Also was flown down to you the drafts and the information which was being learned from Barres. Is that right?

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A Right.

Q So you then went to Puerto Rico with this arrest warrant, and with all the facts, the papers that Barres was providing, and what happened next?

A On July 29, at approximately 12:15 p.m., we arrested Ariel Pomares.

Q Where did that arrest take place? Not the address, was it his home?

A In Puerto Rico, Arriba Heights section.

Q Home or office?

A I believe it was his residence.

THE COURT: Who was with yo at the time of the arrest?

THE WITNESS: Group Supervisor James Edwards, Agents Amador,Pignol, and DiStefano from the San Juan office.

Q You don't speak Spanish. Is that right?

A I do not.

Q When the arrest was made, others spoke to Pomares. Is that right?

A That is correct.

Q Was one of those other agents Pignol?

A Yes, sir.

Q Now, what happened at the time you arrested him?

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Remember everything you are saying and Pomares said came through Agent Pignol or one of the other Puerto Rican agents. What happened?

A At what point, sir?

Q At the point of the arrest?

A We advised him of his constitutional rights.

MR. BOITEL: I object, your Honor.

THE COURT: Who advised him?

THE WITNESS: Actually it was Agent Pignol who advised him of his constitutional rights in Spanish.

MR. BOITEL: The witness does not understand Spanish and he is not qualified to testify.

THE COURT: That is what you thought occurred?

THE WITNESS: Yes, sir.

Q At that point did you offer Pomares to sign any paper?

A Yes, I did, sir.

Q What was that in connection with?

A A consent search of his residence.

MR. LITTLEFIELD: Mark as Suppression Hearing Exhibit 1 this document.

(Suppression Hearing Exhibit 1 is marked in evidence.)

Q Whose writing is this on Exhibit 1?

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A A That is my writing.

Q You said that in English, wrote it down, and had Pignol translate it. Is that correct?

A That is correct, sir.

MR. LITTLEFIELD: I will show it to the Court.

THE COURT: All right.

Q At that point Pomares signed that document. Is that right?

A Right.

MR. BOITEL: May I have an opportunity to read this for a moment?

THE COURT: Surely.

(Pause)

Q Do you remember whether it was Amador or Pignol who was actually doing it, or was it both?

A It was mostly Agent Pignol.

MR. BOITEL: In terms of mostly, either the witness knows who said what or does not know.

THE COURT: He does not understand Spanish, so it would be hard for him to tell that.

MR. BOITEL: That is my point.

THE COURT: All right.

You thought that Pignol did more of the talking than the other agent?

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THE WITNESS: Yes.

Q Amador was involved as well. Is that correct?

A That is correct, sir.

Q Now, was there then, pursuant to this advice of constitutional rights and consent to search, a search of the residence made?

A Yes, sir.

MR. BOITEL: I object to that conclusion. We don't know what is pursuant to what.

THE COURT: I don't think it matters.

MR. BOITEL: We are not accepting this as a waiver in fact at the moment.

THE COURT: All right. A search was conducted.

THE WITNESS: Yes, sir.

Q No drugs or contraband were found. Is that correct?

A That is correct.

Q Now, at that point what happened?

A Ariel Pomarel was removed by automobile to Drug Enforcement Administration Headquarters in San Juan.

Q And during the course of this removal and at that point were you talking to him through one of the interpreters?

A Yes, through Agent Pignol.

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Q What was being said generally?

A I asked him if he would like to cooperate.

Q What did he say?

A He says yes, he would like to do anything to help himself.

Q And what did he say through the interpreter and what did you ask him through the interpreter?

A Well, during the ride there I told him just to think about that anything that he can help us with would be helping himself.

THE COURT: How did you say that to him?

THE WITNESS: Through Pignol. Everything I said to Mr. Pomares was said through Agent Pignol.

Q Then you returned to or you went to the DEA office. Is that right?

A. Yes, sir.

Q At that point was Pomares --

MR. BOITEL: I object to any leading at this point, your Honor.

THE COURT: Well, there is no jury here.

MR. BOITEL: Still and all, we have a witness here.

THE COURT: What is your question? At that time was Pomares what?

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Q Advised of his rights through any form of interpretation?

THE COURT: I will sustain the objection to that.

Q What happened when you went back to the office?

A Advised of his constitutional rights by Agent Pignol in Spanish.

Q Did he sign a consent form in Spanish at this point, a formal form which was at the office?

A Yes, sir, there was some form given to him which was in Spanish which I did not understand, which I was told by Pignol was a consent search form.

MR. LITTLEFIELD: Government's Exhibit 2 for this suppression hearing for identification.

(Suppression Hearing Exhibit 2 is marked for identification.)

Q Did you sign the bottom of this form, Government's Exhibit 2 for identification?

A Yes, I did.

Q Did also Pomares sign it?

A Yes.

Q And another agent?

A Yes.

Q Who was that?

A Group Supervisor James Edwards.

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Q Any other Spanish agents or anybody?

A Agent Amador and Agent Pignol.

Q Does this say 1:30?

MR. BOITEL: The document speaks for itself.

MR. LITTLEFIELD: I am trying to see what it says It is hard to tell whether it has a time on it. I think it does but I can't see it.

THE COURT: All right, this, again, I take it was a consent to search.

MR. LITTLEFIELD: I don't think it is a consent to search at this point. It may be.

THE COURT: Yes, it is.

MR. LITTLEFIELD: Then you speak Spanish, your Honor.

MR. BOITEL: May I have a moment with this and with the interpreter?

THE COURT: Yes. Go ahead with the questions.

Q What happened at this point?

A Through Agent Pignol I asked Mr. Pomares some questions.

Q And what were these questions generally speaking that you asked and generally speaking what were the answers you got back through Pignol?

A I asked Mr. Pomares if he knew Mr. Barres, and

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he said yes. I asked him if he knew Mr. Veciana and he said yes.

Q You knew --

THE COURT: This you would ask Pignol to ask these questions, and he would ask the questions in Spanish, and give you the answers in English?

THE WITNESS: That is correct, your Honor.

Q And you were familiar with the background of this whole case because of what you learned through the Barres statement, which had been flown down to wherever you had been. Is that correct?

A Yes, sir.

Q You asked these questions and continue.

A Again through Agent Pignol I asked Mr. Pomares if he had been present on July 21, 1973 in Mr. Barres's apartment at Miami, Florida. He said yes. I said at that time was Mr. Veciana there? And he said yes. I said "Did there come a time when Mr. Lopez and his son-in-law arrived?" He said yes. I then asked him what did you do? He related again through Mr. Pignol that he and Mr. Veciana left. And while he was getting into his car, Mr. Veciana called him. This was in the parking lot right outside of the Tamiami Drive residence. Mr. Veciana called him and gave to him two packages.

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Q Did you ask him where the packages were from?

A No. I believe he said they came from the trunk of Mr. Veciana's vehicle. I asked him if he knew what was in the two packages, and he said he had no idea. I said "Did you know there was cocaine in the two packages?" He said "I had no idea." I said "What did you do with the two packages?" He said he put them in the trunk of his vehicle and went to the Crossway Motel. When he got there he called Mr. Barres by telephone. Mr. Barres apparently had finished conducting his business with Mr. Lopez and Mr. Figueroa and asked Mr. Pomares to come back and bring the two packages.

The two packages were brought back to the Tamiami address in Miami, Florida, and Mr. Pomares said he took the two packages and put them on the balcony right outside of Mr. Barres's apartment. Then he went through the front door and took the packages in, he and Mr. Barres took the packages into the residence.

I asked him "At that time did you know what was in the packages?" Again he said he did not know. I said "At what point did you know there was cocaine in those packages?" He said after going out to the store to buy some plastic bags and a thermometer and a pecan pie. He said Mr. Barres opened the packages and I saw

the cocaine. I asked him, these are the same packages that Mr. Veciana gave you. He says yes. I said it was at that time you found out that these two packages contained cocaine? He says yes. I said what happened then? He said that he and Mr. Barres began packaging into 1000 gram bundles, from the large packages into individual 1000 gram packages, using a scale, which he referred to as the machinegun. I asked him where did he get the scale? He said Mr. Barres had gotten the scale. I asked him isn't it true that you in fact had gotten this scale from a person called El Enano, The Midget, in Miami? And he denied it. I asked him if he knew El Enano, and he denied all knowledge of El Enano.

Q Keep going if there is more.

A After they finished packaging, and he said it was strenuous doing this type of work. He said they had stopped and taken a break and had eaten some pecan pie, he and Mr. Barres, after which they had taken 7 of the packages and placed them in a suitcase, and Pomares was also given a ticket, an Amtrak ticket from Miami to New York, by Mr. Barres, and he was given instructions to take I believe a train sometime in the morning on the following day, which would have been July 22, 1973.

I asked him what else had happened. Then he

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said he had helped Mr. Barres move the stove so they can secrete the other 3 kilograms of cocaine in a compartment in one of the kitchen cabinets, the wooden cabinets. They would use some type of screw driver, I believe it was a Philips, to remove a panel off the cabinets and secrete the 3 kilograms plus the scale. Then they moved the stove back to its original position.

Then I asked him what did he do? He then related to me he went back to the Crossway. I believe he said there was a relative of his at the Crossway at the time. I don't recall who the relative was, but I believe there was a relative of his present at the Crossway --

THE COURT: Let me see counsel a minute on this, and the Reporter at the side bar.

(At the side bar)

THE COURT: As I can see, he is going to tell his whole story. The problem bothering me about all the Miranda warnings. All that has nothing to do with Miranda warnings. Is Pignol here?

MR. LITTLEFIELD: Yes.

THE COURT: I don't think I need to hear all this stuff, unless counsel want to hear some more of it. I think I would rather have Pignol get on the stand and so you will have a chance to cross examine him about the

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Miranda warnings. I think that is missing at this point.

MR. BOITEL: I would respectfully ask that Pignol not be led as to the fact of Miranda warnings.

THE COURT: Fair enough. We will do that.

MR. GARBER: In other words, your Honor is not even concerned about this problem about the conceivable Bruton problem?

THE COURT: I will get to that later. I am interested in whether this is a voluntary statement first of all, and this fellow can't tell us that.

(In open court)

THE COURT: I am going to excuse you for a few minutes, Agent. I want to hear from Agent Pignol.

(Witness excused)

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O C T A V I O P I N O L , called as a witness on behalf of the Government, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LITTLEFIELD:

Q Agent Pinol, you are employed by the Drug Enforcement Administration in San Juan. Is that correct?

A That is correct.

Q Previously you were with Customs?

A Yes.

Q In fact, how long have you been employed by Customs and DEA altogether?

A Altogether, 26 years with Customs and since July 1973, DEA.

Q You are how old now?

A 49 years old.

Q Now, did you participate in the arrest of one Ariel Pomares on July 29, 1973, in San Juan?

A Yes, I did, sir.

Q You, together with other agents. Is that right?

A Yes, sir.

Q Can you tell the Court what happened and where the arrest took place, and who was there and what happened chronologically.

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A July 29, 1973, about 12:15 p.m. myself and other brother agents went to the house of Mr. Ariel Pomares to arrest him, based on an arrest warrant issued in New York. Mr. Pimares was advised of his constitutional rights in English first --

THE COURT: Who did that?

THE WITNESS: Sir, Agent Bruno did it first in English. Agent Amador did it in Spanish.

THE COURT: Agent Amador?

THE WITNESS: Amador, yes sir. I also did it in Spanish to Mr. Pomares.

THE COURT: At that time?

THE WITNESS: Yes, sir.

THE COURT: What did you say to Mr. Pomares in Spanish?

THE WITNESS: I told Mr. Pomares that he have the right to have a counsel, the right to remain silent, the right to have a lawyer with him during the questions. If he wanted to stop the questions and consult a lawyer, he can do so.

THE COURT: And you say you heard Agent Amador do the same thing?

THE WITNESS: Yes, sir.

THE COURT: Who did it first, Amador?

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THE WITNESS: Bruno.

THE COURT: That is in English. Did you gather Mr. Pomares understood English?

THE WITNESS: He told me he understood very little.

THE COURT: Very little. So first Agent Bruno gave it to him in English and then who in Spanish?

THE WITNESS: Amador.

THE COURT: Then you gave it to him in Spanish, right after Agent Amador?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Q Did you give them to him from the top of your head, or read them from a card?

A I read it off my card. I always carry it with me. I got it over here. It is in English and in Spanish.

Q And this contains --

A Constitutional rights.

Q Statement of rights, including that he has the right to remain silent, in addition to the others that you said?

A Yes.

MR. LITTLEFIELD: Your Honor I am sure is familiar with this.

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THE COURT: Show it to counsel.

MR. LITTLEFIELD: Yes, your Honor.

THE COURT: Do I understand it, Agent, you read this Declaration of Rights to Mr. Pomares?

THE WITNESS: Yes.

THE COURT: Show it to counsel.

MR. LITTLEFIELD: Yes, your Honor.

(Pause)

Q Now, did Agent Amador also have a card or do you remember whether he read from a card, or don't you know?

A I don't recall that part, sir.

Q Now, after that happened, what happened next?

A Agent Bruno wrote on a piece of paper a consent search. Mr. Pomares signed it.

Q I show you now Government's Exhibit 1 for identification of the Suppression Hearing, and ask if that is what Agent Bruno wrote?

A That is correct, sir.

Q And was this then translated to Pomares, referring to Exhibit 1 for identification?

A Yes.

Q Who translated it to Pomares?

A I translated it to him.

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THE COURT: You read that to him in Spanish?

THE WITNESS: Yes.

THE COURT: Before he signed it?

THE WITNESS: Yes, sir, your Honor.

Q Then he signed it?

A He sign it. His signature is here and my signature is below.

Q Now, what happened at that point?

A At that point we search the house. We don't find no contraband. From there we transfer him to the DEA office in Old San Juan, where we advised him again of his constitutional rights.

THE COURT: Who did that?

THE WITNESS: I did it.

THE COURT: How did you do it this time?

THE WITNESS: In Spanish.

THE COURT: How did you do it, the same way?

THE WITNESS: The same way, your Honor.

THE COURT: You pulled out your card?

THE WITNESS:: Yes, your Honor.

THE COURT: What did you do when you pulled out your card?

THE WITNESS: I remind him of his constitutional rights.

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THE COURT: Did you read it?

THE WITNESS: Yes, sir.

Q And during the ride, or at the time at the house did he indicate whether he wanted to cooperate or not?

A Yes, sir. He say he was willing to state what happened, what his role was in this problem that he was involved.

Q When he got back to the office, did he sign again any form?

A Yes, sir, a regular form.

Q I show you Government's Exhibit 2 for identification of the Suppression Hearing, and can you state exactly -- first perhaps that should be translated. Would that be appropriate?

THE COURT: Why not? Go ahead and read it in English.

THE WITNESS: It is a consent search written in Spanish. "I, Ariel **Pomares**, having been informed of my constitutional rights, do permit a search of the property described in this report. I have the right to rescind the search." --

Q I am sorry, I don't get that word. You mean refuse?

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THE WITNESS: Refuse. "By this I mean -- I authorize Federal officers of the Bureau of Narcotics, Department of Justice of the United States, to conduct a complete search of my property, my house, the property described here, A.Y. 1236 B, Arriba Heights, Carolina. This permit written is given by me voluntarily without threats of any promises by the agents."

Q What happened with that, did you show that to Pomares?

A Yes, sir. Mr. Pomares signed it. His signature is here.

Q Did he appear to be reading it before he signed it?

A Yes, sir.

Q Now, you also signed this, is that correct, referring to Government Exhibit 2 for identification?

A Yes, right here.

Q Is there a time on that?

A The time is put 2:30 p.m., the time he read it.

Q What time appears here underneath your signature?

A 1:30.

Q Can you read that more carefully? Are both of them 1:30?

A Yes, 1:30.

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Q Now, what happened at this point?

A At this point Mr. Bruno was asking him a question in English. I was translating the questions --

THE COURT: How long after this document was signed did the questioning start?

THE WITNESS: Immediately after, sir.

THE COURT: Right after?

THE WITNESS: Yes, sir.

THE COURT: Mr. Bruno began asking questions and you would translate?

THE WITNESS: Yes, your Honor.

THE COURT: All right. Who else was present at that time?

THE WITNESS: Amador, Agent Vincent DiStefano, Agent James Edwards, and myself.

MR. LITTLEFIELD: Just for a moment I will skip over what the questions and answers were.

Q Did there come a time when you started taking notes and trying to write down what was being said?

A I took notes after Mr. Bruno was satisfied what he was asking him and the answers given by Mr. Pomares. I decided then -- we decided for me to take notes and to write it.

Q You went through it all again and started

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writing it all down?

A Yes, sir.

Q Did there come a time, some time thereafter, when you prepared a written question and answer kind of form as to what had been said?

A Yes, sir.

Q Did you make that from your notes?

A Yes, sir.

Q And when was that, if you remember? Was that a day or two later?

A Yes, sir. That happened July 31 I wrote the report.

Q And then it was typed. Is that right?

A Yes, sir.

Q Do you know when it was typed?

A I wrote it down July 31. I don't recall when it was typed. Maybe two, three days later because I was out of Puerto Rico at that time.

THE COURT: What happened to the written draft which you made?

THE WITNESS: Well, I left in San Juan somewhere.

THE COURT: You haven't got it?

THE WITNESS: No. I did not brought it with me, your Honor.

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MR. LITTLEFIELD: At this point I don't think I have any further questions.

THE COURT: Go ahead, Mr. Boitel.

CROSS EXAMINATION BY

MR. BOITEL:

Q That is Agent Pinol?

A Yes, sir.

Q Let me ask you this, sir: What was your first involvement with anything to do with this case?

A I recall the 27th I received a call from Agent James Edwards --

THE COURT: I don't want you to get too far afield here.

Q The 27th?

A Yes.

Q There came a time at 12:15 on the 29th that you showed up at my client's home, Mr. Pomares's home?

A Will you please repeat the question.

Q 12:15 p.m. on the 29th of July, you arrived with other agents at my client's home. Is that correct?

A That is correct, sir.

Q With an arrest warrant. Is that correct?

A Yes, sir.

Q It was only an arrest warrant, correct?

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A Arrest warrant and a copy of a complaint.

Q Now, what agents were with you?

A With me was Agent Joseph Bruno, James Edwards, Andreas Amador, Vincent DiStefano.

Q Does that make five of you altogether?

A Yes, sir.

Q Did you knock at the door?

A Yes, sir. Well, he have an iron gate there. We call "Mr. Pomares house?" His wife came. We identified ourselves as Federal agents, and he invited us into the house.

Q Which of the agents spoke first to Mr. Pomares?

A I believe it was Mr. Amador.

Q And what did he say exactly?

A "You Mr. **Ariel Pomares?**" He stated yes. "We are Federal agents. We have an arrest warrant for you. We don't want to make any fuss. We want to come into your house and do the arrest quietly."

Q So you told him to go back into his house?

A No, he invited us into the house.

Q And where did you go in the house, where were you?

A We went to the driveway, it is like a porch. He made a porch there as I recall.

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Q An enclosed porch?

A Almost enclosed, yes sir.

Q Who was there, Mr. Pomares and who else?

A Mr. Pomares, his wife and one of his children.

Q And all five agents?

A Yes, sir.

Q And then what happened?

A We told Mr. Pomares he was under arrest.

Q No, who told him?

A Amador and myself.

Q Who spoke first, you or Amador?

A Amador.

Q What did Amador say?

A That he was under arrest.

Q He just said "You are under arrest, Mr. Pomares." Is that right?

A He asked first if he was Ariel Pomares. The answer was yes. And then "You are under arrest."

Q Then what happened?

A Showed it Amador to Pomares.

Q You mean he gave him a copy of the warrant?

A I don't recall that part. I believe we leave a copy --

THE COURT: You mean you showed him a warrant?

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THE WITNESS: Yes.

Q You mean you flashed it and said here is the warrant.

THE COURT: Don't testify.

How did you show him the warrant?

THE WITNESS: Opened the warrant and show it to him.

Q Did he let him read it?

A He said he no understood too much English.

Q The warrant was in English?

A Yes, sir.

Q Well, did someone tell him what the warrant said?

A Yes, sir.

Q Who did?

A I believe I did. He was arrested because of violation of the Federal Narcotics Law.

Q You told him what the warrant said?

A Yes, sir.

Q Did you translate the warrant to him?

A Well, I told him what he was arrested for.

Q Then what happened?

A Then Mr. Bruno ask Mr. Pomares if he consent to search. He answer in the affirmative.

Q When Bruno asked him, he asked him through who?

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A Through me.

Q You mean the question was Do you consent to our searching your house?

THE COURT: Don't you testify.

If you remember what he said, tell us what he said.

A He told me to translate to Mr. Pomares if he was willing to let us consent to search his house for narcotics or any other evidence that incriminate him. He said "I don't have nothing here. I consent to search." Mr. Bruno wrote it down.

Q And he wrote it down on this piece of paper here?

A That is the only piece of paper we had at that time.

Q Referring to Government's Exhibit 1 for identification at this hearing, right?

A Yes.

Q Now, from the point that you had entered this porch until the point that Mr. Pomares signed this piece of paper, is everyone still in the room?

A Yes, sir.

Q The five agents are there?

A Yes.

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Q Mrs. Pomares is there?

A Mrs. Pomares and her children.

Q Then what happened?

A After Mr. Pomares signed the consent search we follow his wife. She show us the bedroom --

Q Excuse me. Did anything happen that caused her to bring you to the bedroom?

A We were going to start -- the bedroom is on the second floor of the house. We decided to start searching from the second floor down.

Q Now, when you say showed us, did all five agents go to the bedroom?

A No.

Q Who went?

A I went with one of the other agents. I don't recall which one.

Q Where was Mr. Pomares at that point?

A Downstairs with the other agents.

Q Now, there, therefore, was a period of time that Mr. Pomares was outside of your presence. Is that correct?

A Yes, sir.

Q How long a period of time was that?

A It was a very short period of time. I don't

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recall the exact time.

Q Well, was it a half hour?

A Maybe.

Q A little more, a little less?

A Maybe a half hour.

Q Did there come a time that you returned and saw Mr. Pomares again?

A Yes, sir.

Q Who had, as far as you are aware -- let's put it this way. When you left Mr. Pomares, what agents were with him?

A Amador, I believe. I don't recall exactly which ones were.

Q Where was Bruno?

A Bruno was with Mr. Pomares.

Q Edwards?

A Yes, sir.

Q He was with Pomares too?

A Yes, sir.

Q When you returned approximately a half hour more or less later, who was with Pomares?

A Still Mr. Bruno and Mr. Edwards.

Q The same agents you left him with?

A Yes, sir.

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Q Then what happened?

A From there we went to the DEA office in Old San Juan, where the U. S. Attorney was called. U. S. Attorney recommended the bail for Mr. Pomares --

Q Excuse me, I am sorry. You say "We went." How did you go?

A By car.

Q Who was in the car with you?

A My car was Mr. Pomares, Mr. Bruno and Mr. Edwards.

Q Did anything happen in the car?

A I don't recall. I mean I don't know what.

Q Did you advise him of his rights in the car?

A Yes.

THE COURT: Who was driving the car?

THE WITNESS: I was driving the car.

THE COURT: Where was Mr. Pomares?

THE WITNESS: In the back seat.

Q Did you advise him of his rights in the car?

A He was already advised of his constitutional rights.

Q The question is did you advise him of his rights in the car?

A I don't recall that part.

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Q Did you hear anyone advise him of his rights in the car?

A No, sir.

Q Did you hear any conversation in the car?

A Mr. Bruno was talking to him. He say some time he understood English, some time he did not understood English.

Q Well, were you interpreting?

A Yes, sir.

THE COURT: In the car this is. In the car were you interpreting?

THE WITNESS: In the car I hear some conversation and maybe I translate.

Q Was there anybody in the car interpreting?

A No, sir. It was Mr. James Edwards, an American agent. He don't speak Spanish. Neither does Mr. Bruno.

Q So there were dribs and drabs -- you understand that expression? -- dribs and drabs of conversation and occasionally you would translate?

A That is right.

Q It was not formal. Is that correct?

A That is correct.

Q Then what happened?

A From the office I called the U. S. Attorney and

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explained to him what happened. He recommend to see the Chief Judge that was the only available at that time, and recommend a hundred thousand dollars bail.

THE COURT: When did you have this conversation with Mr. Pomares that you interpreted for the agent, Mr. Bruno?

THE WITNESS: That happened at the office, sir.

THE COURT: This is before he was arraigned, I take it, before the Chief Judge?

THE WITNESS: Yes, sir.

THE COURT: You had this conversation with him before that?

THE WITNESS: Yes, sir, your Honor.

THE COURT: What time did you arraign him, do you remember?

THE WITNESS: What time?

THE COURT: What time did you arraign him before the Judge?

THE WITNESS: That happened between 4:00 and 5:00 p.m.

THE COURT: This conversation was before that in headquarters?

THE WITNESS: Yes, your Honor.

Q You indicated, I believe on direct examination,

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that you had advised Mr. Pomares of his rights at his home.

A Yes, sir.

Q And you also indicated that another agent advised him of his rights at his home.

A Yes, sir.

Q Did the other agent read from a card?

A I don't think so, sir.

Q Did the other agent, to your recollection, advise him of all the information that is on the card?

A I don't recall if it was exactly the words of this card.

Q Can you tell us what you heard the other agent say?

THE COURT: If you recall.

THE WITNESS: I don't recall.

Q Then it is possible that one or more of the provisions of that card was not recited; you just don't know. Is that correct?

A That is correct.

Q You cannot say as you sit there that he said everything that is on that card?

A That is correct.

Q Why did you pick out your card and recite the

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rights to him?

A In Custom I learned in my 26 years there that I have to be sure that any defendant understood his constitutional rights.

Q And is that why you recited them to him a second time yourself, and a third time, as far as you are aware, back at the Bureau?

THE COURT: I don't understand that question. I understand the agent said he did it once at the house and once at headquarters. Is that correct?

THE WITNESS: That is correct, your Honor.

Q So the total number of efforts to advise him of his rights in your presence were three, two by you and one by somebody else?

A Yes, sir.

THE COURT: Gentlemen, I am going to have to call this hearing to a close.

MR. BOITEL: May I ask two or three short questions?

THE COURT: Yes. I will be glad to meet you early in the morning.

MR. BOITEL: I don't believe this has been marked.

MR. LITTLEFIELD: No. I haven't the original

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with me.

MR. BOITEL: We can mark this.

May I have this marked Defendant's Exhibit A.

(Defendant's Exhibit A was marked for identification.)

Q That, sir, is a copy of your report concerning statements made by my client. You know the report I am talking about, and you may take a look at it (handing).

A Yes, sir, I recall this report.

Q Is that the result of the information you learned as you interpreted the questioning of my client by Mr. Bruno?

A That is correct.

Q Now would you say, is this the questioning that you heard at the station house, in the car, at the home, wherever you may have heard questioning?

A That questioning happened, all that questioning happened at the headquarters.

Q At headquarters?

A Yes, sir. All the notes were taken at headquarters.

Q You are saying this report only concerns information learned by you at headquarters?

A The notes were taken at headquarters.

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Q You did not make an effort to exclude anything you had learned before you got to headquarters, did you?

A No, sir.

Q And if you take a look at the first three paragraphs --

THE COURT: I am going to recess right now, gentlemen.

I will be glad to meet you early. I have a matter in the morning, at least I am told I have. I would like to continue this in the morning at 9:30.

I would like to see counsel a minute when we recess.

MR. BOITEL: May the witness be considered under cross examination and not discuss the subject matter of his testimony?

THE COURT: Yes. Don't discuss this case with anyone.

THE WITNESS: Yes, your Honor.

(Adjourned to January 10, 1974, at 9:30 a.m.)

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United States of America

vs.

Antonio Veciana et al.,

New York, New York
January 10, 1974 - 10:00 a.m.

(Trial resumed.)

(In the robing room.)

THE COURT: Good morning, gentlemen. By the way, Mr. Garber, who is the young fellow sitting at the end of the counsel table?

MR. BOITEL: He is actually with me, your Honor. He is one of my next door neighbors who I have utilized to interpret between myself and my client in the absence of the interpreter. Or when it is something --

THE COURT: What is his name?

MR. BOITEL: His name is Carlos Carra. He is not going to be here this morning. Actually he is a senior in high school.

THE COURT: I just noticed and I tried to be absolutely fair in these things. I did notice on one occasion, I don't know whether it was wilfully or not, he was facing the jury and shaking his head so as to give the impression that Barres' testimony, nobody would believe that. I don't want that to happen. He may not have known

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he was doing it.

If he comes back, I don't want him sitting there facing the jury.

MR. BOITEL: I will tell him that.

THE COURT: If he is serving in an interpretive role, I would like to have him around, if you want that. But don't have that happen.

Secondly, I don't know if we are going to have jury trouble this morning or not, I hope not. We haven't heard anything yet. I would be perfectly willing to go on with this hearing at least until the jury comes, and then I will resume the trial and we will have another opportunity to go into it.

In thinking about it, I have a problem which I want to raise with you. As I understood the story, the cousin would ask the questions, and Bruno, that is, would ask the questions in English and then Pinol would translate them and get the answers.

I rather think that if we do this before the jury, to have Bruno tell us what the answer is, that is hearsay, it seems to me. It seems to me I think Pinol will have to testify about that. That is why I am raising that, to see if you gentlemen have any questions about it.

I think Bruno could testify about being there

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and the procedure that was followed. I think as to any alleged admissions made by Pomares, that should be done by Pinol. That's my thinking about it.

I just want to mention that to you, too.

MR. BOITEL: Your Honor, that has been my precise point all along. This typewritten statement is Pinol's report of that interview.

THE COURT: That's not going in.

MR. BOITEL: I know that. I don't know that it ever could have come in as such.

THE COURT: This happens all the time and this is not something -- you were furnished with the text of the report, so you can't say you are surprised as to the nature of the testimony that would be elicited.

MR. BOITEL: No, my surprise is that the testimony that is to be elicited is precisely the testimony which Mr. Littlefield, the prosecutor in this case, had represented wouldn't be.

THE COURT: I do remember that, and I think the minutes would bear it out. I think when we had the pretrial conference, the question was raised about a possible arrest statement by defendant. I was told there wasn't going to be any post arrest statement given at the trial. That doesn't change the view.

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I think the Government, subject to anything further you might bring out in the hearing, if the defendant makes answers to questions to an agent after his arrest and if they are voluntary, I think they are admissible as the statements he made after arrest, not as a report or anything like that.

MR. BOITEL: No doubt. Except for the fact that the Government waived its right to put these in.

THE COURT: I wouldn't construe their waiver to go that far. I don't construe the waiver to go that far. But as I indicated last night, I don't think I am going to involve Veciana, because as I heard the agent yesterday, the only thing that he had about Veciana was that Pomares told him that he had gotten two bags from Veciana and all the rest of it was about the distribution, as I recall it, all that fixing the bags.

MR. LITTLEFIELD: Right. There was just the other statement about how they were meeting together in Room 111 when the two other people came in.

So we can just leave out Veciana.

THE COURT: I think I'd like Veciana because I don't want any danger of a Bruton problem here at all.

MR. GARBER: Also,no reference to another person --

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THE COURT: No redaction. I think I would like the testimony limited really to the time Pomares brought the two bags and went through the balcony and what happened and packaging the stuff, and that kind of thing.

MR. LITTLEFIELD: What he could say, your Honor, would be that "I met with Barres in Room 111 and then these other men came in," and then leave out Veciana.

MR. GARBER: That leaves rise to a very, very strong inference --

THE COURT: I think I would rather you didn't do that. I think I would rather you did it from the time that the two bags arrived and they went up through the balcony and what he said about that.

I don't want to take the chance on this. I don't think anybody does. I think I'd rather leave it at that, because there are so few people involved, there are only these three people. I think it would be fairer that way. That is al I try to do in these cases is try to make it as fair as possible, and I think that would be the way I would like to do it.

MR. LITTLEFIELD: Does the jury draw some sort of an inference as to whether he only began his confession at that point, or that there is more that came before that we aren't telling them, or how does it work?

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THE COURT: I don't think they draw any inferences at all. What this is doing, this is really corroboration, it is admission, all right, but what its real purpose is is corroboration of Barres, isn't it?

MR. LITTLEFIELD: Yes.

THE COURT: It really is. I think I'd like to leave it that way. If you feel you would like to go ahead, anybody, with the hearing at this time on the suppression, I will do it at least until the jury comes in.

MR. BOITEL: I would like to.

THE COURT: Let's go ahead.

MR. LITTLEFIELD: Your Honor, I told your clerk this morning that Judge Kaufman begins the Court of Appeals at 10:00 o'clock in the morning this week. I arranged to have my argument the last one in the morning. I have another Assistant upstairs at 1115 who will come and get me as the moment draws near. It could be around 11:30.

THE COURT: We will have to do that. I hope we get the jury in this morning. I want to break this as soon as the jury is here. Then I take it you will pick up with your direct --

MR. LITTLEFIELD: Yes.

MR. BOITEL: The question of the voluntariness of the confession will still to some extent be a question

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for the jury. That is whether they believe this man was fed this information.

THE COURT: You can suggest anything you want in the charge. There are a lot of cases on that subject as to whether you can. I have charged in the past that if you find that these statements were made and if you find they were made voluntarily, there have been some Court of Appeals cases on this which I think raised some point on that.

I will hear you in connection with the charge on that, what I should charge.

MR. BOITEL: My only concern at the moment, I just want to alert everybody to this in advance, if I go into cross examination as to what was said, how it was said and the sequence of what was said, I am just concerned that there may come from the officer a response something which we are trying to avoid as far as a Bruton problem is concerned.

THE COURT: I don't think that should be involved because I am sure that this gentleman isn't going to talk about Veciana. If I think there are any questions that I think are going to raise that, I know Mr. Littlefield will probably raise it and if he doesn't, probably I will raise it myself.

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MR. BOITEL: I am not going to raise it myself, but when a witness is on cross examination, sometimes that sort of thing may be more likely to pop out than on direct. That's just what I wanted to --

THE COURT: That's right. Just watch your questions a little bit and see that it doesn't come out.

You will get a trial run here if you want to go and examine Pilol right now some more. You are getting a trial run on it.

MR. BOITEL: Eventually we are also going to get back the other fellow Bruno on this hearing. I'd like to get him back on the hearing. He has testified on direct on the hearing. I don't know whether there is going to be any more direct. I'd like to get him on cross.

THE COURT: You are entitled to do that. I just want to move along, gentlemen. We are slowed up on account of the weather and one thing or another.

I would be grateful if you would assist me in this thing.

MR. BOITEL: Just so that -- this doesn't have to be raised in the presence of the jury. If we are not finished with the hearing by the time Barres is finished with his testimony at the trial, I am going to want him at the hearing as well.

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MR. LITTLEFIELD: I am confused. Who do you want at the hearing?

MR. BOITEL: I am going to want Barres to testify at the confession hearing in this case.

THE COURT: I think I indicated yesterday I want Barres kept around for any purpose such as seems reasonable, and let's get through this. Then if you want him, tell me why you want him and he will be available anyway.

We went through that yesterday. All right.

(Discussion off the record in the robing room.)

(In open court.)

A U G U S T I N B A R R E S, a witness, recalled to the stand, having been previously duly sworn, testified further as follows:

MR. LITTLEFIELD: Your Honor, the scales are at the laboratory. They will be brought back but we may not get them here on time before he finishes direct. I would like to introduce them on redirect, if that is all right.

THE COURT: Yes.

MR. BOITEL: While the jury is still absent, I would be willing to stipulate that the scales the Government later brings in, whenever they bring them in, would be the same scales testified to, as long as there

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is no fingerprint evidence or something --

MR. LITTLEFIELD: Traces of cocaine will be found.

MR. BOITEL: That's all right.

THE COURT: I don't think they are worried about the traces of cocaine.

MR. GARBER: We will stipulate to that.

THE COURT: Thank you very much. Bring in the jury.

(Jury present.)

THE COURT: All right, you may proceed, Mr. Littlefield.

DIRECT EXAMINATION

BY MR. LITTLEFIELD: (Continued)

Q Mr. Barres, keep your voice up, loud and clear again today, if you can, please.

A I will try, but I have some cold.

THE COURT: You are not alone in that. All right.

Q Yesterday we ended, I think, just more or less at the point where the policemen had come in and arrested you, is that right, in this hotel room at the Hotel Taft?

A Yes.

Q What happened after that?

A Well, when the police came in, I was searched

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and they read me my rights. I was handcuffed and the cousin at that time started making noise and saying get me a lawyer, get me a lawyer, who through this bag into this room, and all that type of thing.

I couldn't understand what was happening. About 10 or 15 people went into the room. They search all my property there. They occupy the baggage. I was taken by the police detective in a car and over there I found out in the car that a lieutenant, someone identified as a lieutenant had told me that they have been looking for five years through this cousin, had been a murder, had killed a lot of people, and all that, and I was very worried because I said besides the cocaine thing now I have to -- a murder after my back.

When I arrived there --

THE COURT: Arrived where, sir?

THE WITNESS: Arrived to the drug enforcement, I think it is a building in front of here, they read my rights in there.

THE COURT: When you say they read your rights, what is that?

THE WITNESS: They told me that I was entitled not to talk, not to say anything.

THE COURT: You say they read them.

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What did they read them from?

THE WITNESS: They had a small piece of paper where they had all the things like I have seen in the pictures.

THE COURT: Someready read it to you?

THE WITNESS: Yes. At the beginning I was very tight of not talking because I was scared of this man that they said had killed so many people.

Q Who were you scared of?

A Of the undercover agent that was supposed to be the cousin. Then when they said we are going to give you a surprise, they brought in the undercover agent --

THE COURT: The cousin?

THE WITNESS: The cousin.

His name was Bruno. Then he identify himself as an undercover agent and then I was very happy that he was an undercover agent and I requested that I want to talk and tell all the truth that I knew about this thing, and I was also said not to talk without a lawyer.

I even said I don't need a lawyer to tell the truth on this. However, they requested that I had to have a lawyer for that thing.

Q When you say you were very happy that he was an undercover agent, what did you mean?

A I was happy to find out that he was an undercover

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agent and not the criminal that they had told me before he was because besides being in the situation I had with the cocaine, I had the trouble of this criminal behind my back also at that time.

Q At that point, what happened next? Did you begin to cooperate?

A No. They send me to the West --

THE COURT: West Street?

THE WITNESS: West Street penitentiary.

THE COURT: House of Detention?

THE WITNESS: House of Detention. I was there in a place with another 13 persons, in a cell. They fingerprint me there again and they gave me some clothes. When you arrive there they remove your personal clothes and you have to take a uniform from there.

The next day about 10:00 o'clock in the morning they came -- the agents came to pick me up and brought me to see Assistant District Attorney Bannigan, and over there I talked -- I said the things that had happened.

Q Then did you continue to make statements as to what had happened?

A Yes. I -- he didn't accept the statements until I had a lawyer with me, and I finally was -- I got the telephone book and I had a lawyer, because I knew civil

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lawyers but I had never heard -- I didn't know about criminal lawyers, and I obtained the service of an attorney Solomon, and he came and he told me of all my rights and if I wanted to confess -- I said why am I going to confess, it was true that I had the baggage on my room, and it was true that I was going to sell it to him.

MR. BOITEL: Your Honor, I would object to some recitation of prior extrajudicial statements made by this witness.

THE COURT: All right. You say they brought this lawyer Solomon, and you said you just wanted to go through and tell them the facts, is that right?

THE WITNESS: Correct.

Q Did you speak to other officers for a number of days in a debriefing, so to speak?

A No. I -- during that day I went through my confession, saying what I had done, but that was the next day after being put in detention. Then after that I didn't talk more to anybody.

Q A few other questions.

You had talked earlier about this code that you were going to use to refer to the cocaine transaction when you talked on the phone.

A Yes.

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Q At the time that you had the sample which you were going to give to the cousin, did you talk to him on the phone?

A Yes.

Q What did you say to him?

A I told him I had the copy of the document to show it to him.

Q What did that mean, according to the code?

A Well, because I state yesterday, we were using the word acres for kilograms and talked about deeds and documents because I was in the real estate, and I had told --

THE COURT: I think the question is, in your code that you had with the cousin, what did document mean?

THE WITNESS: Documents was the cocaine.

Q You had earlier said that you were divorced from your first wife, is that right?

A Yes.

Q That was in 1971?

A Yes.

Q Sometime thereafter you married again, is that right?

A I marry in March, 1972. Exactly a year. Ten days before a year.

Q Are you divorced from this wife as well?

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A Yes.

Q When was that?

A November 7th of this year.

Q Did you become am American citizen sometime after you came here from Puerto Rico from Cuba?

A I became a U.S. citizen in 1970.

Q Have you ever been convicted of any crime prior to this matter?

A I had even -- I have not any type of conviction of any kind. Maybe a parking ticket.

Q I show you criminal information 74 CR 12 and ask if you are the Augustin Barres named in this?

A Yes.

Q This charge is a conspiracy charge to violate the federal narcotics laws, is that right?

A Yes.

Q You pled guilty to this conspiracy charge, is that correct?

A I pled guilty to his Honor.

Q This was on what day, do you remember?

A I don't remember at this moment.

Q Was that Monday of this week, do you remember?

A I think so.

Q Do you know what the maximum penalty is?

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MR. GARBER: We object to that. That really is not immaterial. That is not a question to be brought before the jury.

THE COURT: I don't think you have to answer that, whether he knew -- I did ask you about it, didn't I?

THE WITNESS: The --

THE COURT: Never mind.

Q This crime to which you pled guilty included the sale of -- the conspiracy which involved among other things, the sale of the seven kilograms of cocaine in New York, is that right?

A Yes. 15 years in jail, $25,000 --

Q Don't say anything about that.

MR. GARBER: Your Honor, this witness is intelligent enough to realize that your Honor sustained an objection.

MR. LITTLEFIELD: There need be no speech.

THE COURT: Don't say any more. I would like to say this to the language. Before he pled guilty I informed this man what the penalties were under the statute, but that's not relevant to this case and you need not concern yourselves about it at all.

THE WITNESS: I didn't mean to say --

THE COURT: All right.

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(At the side bar.)

THE COURT: Are you ready to proceed on your cross? You did get the 3500 material.

MR.GARBER: Yes.

THE COURT: You did, too?

MR. BOITEL: That's right.

MR. LITTLEFIELD: Your Honor, may I just say one thing?

Normally bad acts that don't result in convictions are not the subject of proper cross examination, and I just wanted to advise defense counsel that if there are business dealings that any of these men had with this man that they had before that they are going to suggest there was something wrong with, we object.

I understand any standard that is not related to the cocaine sales.

MR. BOITEL: I don't believe that is the rule.

MR. LITTLEFIELD: I have a memorandum.

MR. BOITEL: I'd like to have it. Maybe we ought to get that out of the way --

MR. GARBER: I think we ought to proceed on cross examination. If counsel has an objection, he ought to appropriately raise it.

THE COURT: Let's proceed that way. Usually

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it is a question of criminal conviction and not a lot of problems as to business dealings. I agree with that. Let's go ahead and start.

(In open court.)

CROSS EXAMINATION

BY MR. GARBER:

Q Mr. Barres, when was it that you said you came from Cuba to the United States?

A I arrived on January 8, 1961.

Q Prior to your coming to the United States, is it my understanding that you testified you were a member of the Cuban Government?

A Correct.

Q What specific position did you hold with that government?

A I already declared that yesterday --

Q I am asking you now --

THE COURT: You can tell us again.

Q -- what position you held.

A I had several positions with the government.

Q Would you tell us about them, please?

A Yes. I was first in the Tax Collection Department in Cienfuegos, Cuba.

Then in the Public Health Department as the

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general manager of the Public Health Department.

THE COURT: Public Health Department of what?

THE WITNESS: Cuba.

A Then until October of 1960, assistant secretary of communications in the Administrative Division.

Q You told us then about all the positions you have held in that government?

A As far as I recall, sir.

Q Was this during the period of time that Fidel Castro had assumed leadership of the Government of Cuba?

A Of course.

Q Did you hold any governmental positions at all prior to Castro's taking over the leadership of that government?

A No, sir.

Q What jobs did you have prior to your governmental employment?

A I worked for Tecon Corporation of Dallas, Texas on the construction of a tunnel in San Juan -- in Cienfuegos Cuba.

THE COURT: In Cienfuegos?

THE WITNESS: Yes, sir.

Q Going back once again briefly to your employment in the Castro regime, you were an under secretary or an

under prime minister?

A An assistant secretary.

Q Your immediate supervisor would have been a cabinet member, is that correct?

A At the Communications Department, my immediate supervisor was the Secretary of Communication.

Q By what means of transportation did you leave Cuba to come to the United States?

A I left on a Pan American flight.

Q Wasn't that rather unusual during that period --

THE COURT: I don't know about that. You left on a Pan American flight at Havana airport?

THE WITNESS: Yes.

Q Wasn't that the period of time when a great many Cuban leaders and governmental officials fled from Cuba by use of small boats?

A I am not a navigator, sir.

Q That's not my question, sir.

My question is, isn't it a fact that during that time when you departed from Cuba by Pan American aircraft, that many of your fellow government workers fled from Cuba in small boats?

A There are two or three people that I know went by boat. Yes.

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Q But you are not saying that the two or three people that you knew were the only ones that fled by boat, are you?

A No.

Q Do you recall the amount of funds that you were able to take with you when you left Cuba?

A The amount of funds?

Q Yes, sir.

A No, I don't.

Q Do you recall if it was more than or less than $10,000?

A It was less than $10,000.

Q Did you have government approval for your leaving Cuba?

A Any person leaving by the airport in Havana had to have permission to leave.

THE COURT: The answer is yes?

THE WITNESS: Yes.

Q From whom did you obtain that approval or permission?

A I did not obtain the approval. It was, you sent the passport to the police and the police will send it to Havana and in Havana if you were not on a list of names that they had, they would put the okay and you were sent.

Q Eventually, then, you are saying you received an okay, is that right?

A Correct.

Q Were you a member of the July 26th movement which was headed by Fidel Castro in Cuba in perhaps '58 or '59?

A I was a member of the 26th of July movement.

Q Counsel for the Government had asked you if you are an American citizen and you responded, yes, you are. Is that right?

A Correct.

Q Isn't it a fact that on one occasion you had applied for citizenship but that was denied you because you had failed to tell this Government, the United States Government, that you in fact had been a member of the July 26th movement?

A That is incorrect.

Q That is incorrect?

A Incorrect.

Q Is it your testimony that you received your citizenship the first time you applied for it?

A I applied for the citizenship and I had to wait one year because I had to be cleared in the United States Court of not being a Communist.

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Q Did you tell the Government in your application for citizenship that you had belonged to the July 25th movement?

A Yes, sir, I did.

Q From the very first time you made application?

A From the very first time.

Q While living in Cuba, did you know Antonio Veciana?

A I didn't know Antonio Veciana in Cuba.

Q You did not know him at all?

A No, sir.

Q When was it for the first time that you met Mr. Veciana?

A I met him or I knew him around 1963 when he was involved in activities of Alpha 66 Group in San Juan.

Q Would you tell us what Alpha 66 Group was?

A Alpha 66 Group was a group organized to fight against Castro.

Q As a matter of fact, you knew at that time in '63 and you know today that Antonio Veciana is in fact a leader of the anti-Castro movement, is that true?

A I would not say he is a leader because we don't have any leaders here.

Q He is very active in that organization, is he not?

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A He had been very active on that.

Q As a matter of fact, very active all during the period of time that you have known him?

A Until 1968 or '69, I think he was active. He had been very cooperative against Castro. Yes. That is definite.

Q As a matter of fact, at some point in time, isn't it true that you had contributed some money to an anti-Castro activity in which Mr. Veciana was engaged?

A Correct.

Q Do you recall how much money that was?

A $2,000.

Q Was that given to Mr. Veciana in cash or by check?

A It was not given to Mr. Veciana.

Q To whom was it given?

A It was given to Reinaldo Abreu in Miami.

Q Did Mr. Veciana ever seek or ask you for funds for the anti-Castro cause?

A Mr. Veciana asked me at that time, and he asked about four or five more people, contributions up to $14,000 altogether for a plan to kill Castro in Chile.

Q Do you recall when that was?

A I even have in my briefcase here -- in my pocket when I gave the $2,000 to Reinaldo.

Q Tell us, approximately when. Refresh your

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recollection.

A April 22, 1971.

Q Mr. Veciana, may I see that piece of paper you refreshed your recollection with?

A I am Mr. Barres.

Q Mr. Barres, I am sorry.

(Pause.)

Q Have you kept that paper all the time since you received it?

A Yes, I kept this paper. This is the only paper that I had kept besides some papers that I have of the story of how we had the failure of killing Castro in Chile. This paper, it happened that I had put by accident in my pocket. Since that time it is still with the picture of my father and mother there.

Q I think you testified yesterday that you had at one time received a letter from Mr. Veciana and that you no longer have that letter. Do you remember that?

A I didn't have any letter from Mr. Veciana pertaining to cocaine, for obvious reasons.

Q I understand that, sir.

Do you recall receiving a letter during either the month of May or June, 1972 from Mr. Veciana, and is that the letter you referred to?

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A In regard to what, sir?

Q First let's establish if you recall.

A I received from Mr. Veciana many letters. Some of them before the cocaine and some of them after the cocaine. So we can say before Castro and after Castro or before cocaine and after cocaine.

THE COURT: Don't say before Castro or after Castro.

MR. GARBER: Mr. Clerk, would you mark this as an exhibit for identification, please.

(Defendant Veciana's Exhibit A marked for identification.)

xx

Q Mr. Barres, at this time I would show you Defendant's Exhibit A for identification and ask you to examine it and merely answer whether you recognize it or not.

(Pause.)

Do you recognize that letter, sir?

A I don't remember this letter. In regard to the Fidel Castro --

THE COURT: You don't remember that letter?

THE WITNESS: No.

MR. LITTLEFIELD: Could he just wait a second while I read it?

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THE WITNESS: It is in Spanish.

MR. LITTLEFIELD: Your Honor, if there is going to be questioning on the letter, I --

THE COURT: He says he doesn't remember the letter, so that takes care of that.

MR. LITTLEFIELD: If there is any questioning, I would perhaps like to have it translated at the side bar or whatever.

Q When you say you don't remember it, you are not denying that you received it, are you?

A If I would have known that into this court was going to bring the matter of Castro, I would have bring the Castro file and I could say.

THE COURT: Wait a minute, Mr. Barres. You saw the letter. Do you ever remember seeing that letter before?

THE WITNESS: I honestly don't remember to have seen the letter.

Q In April or May of 1972, isn't it a fact that you were engaged in legitimate business enterprises with Mr. Veciana?

A In April, 1972 we were in legitimate business.

Q Would you tell us, please, about those enterprises?

A We took the Cincinnati and Reds to Venezuela.

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Q Those are the baseball teams you told us about, is that correct?

A Yes.

Q Were you also interested in a bag manufacturing company or hoping to form a bag manufacturing company in Venezuela?

A Not in Venezuela, sir.

Q Where?

A We talk about having a bag manufacturer in Bolivia in order that we have an excuse to talk and write each other to Bolivia.

Q So at this point you have told us about two legitimate business enterprises?

A One legitimate business. The Cincinnati and Reds.

Q Let's talk about the baseball game. That was to be a series of three games to be held in Puerto Rico?

A No, sir, in Caracas, Venezuela.

Q What year were those games to take place?

A In April, 1972.

Q With whom were you engaged in that enterprise?

A With Mr. Veciana.

Q Any other person?

A And with Mr. Zabala.

MR. LITTLEFIELD: Your Honor, I am sorry. What

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is this?

THE WITNESS: This is --

MR. BOITEL: I object to reference to any documents such as these and exhibiting them to the jury as the witness is doing. Apparently he has a suitcase full of things there.

THE COURT: Wait a minute. They don't like it. Put it away. All right.

Q I believe the question was, did you contribute money to that enterprise.

A I contribute money to the enterprise.

Q How much?

A Approximately $19,000. That was our loss.

Q Where did you obtain the funds for that enterprise?

A I obtained those funds from a letter of credit from the First National City Bank from the First National City Bank in San Juan, Puerto Rico.

Q Did you obtain the exact amount you needed or a greater amount?

A No. As a matter of fact, I obtained less amount than was needed.

Q Did any of your other associates in that enterprise contribute money?

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A Mr. Veciana.

Q How much did he contribute, if you know?

A I think he lost about $9,000 in the operation.

Q You said he lost about $9,000?

A Yes.

Q How much did he contribute?

A He originally did not contribute with anything because he was doing the work himself. He came from Bolivia to handle that operation in Caracas.

Q Do you recall the date or precise date that those baseball games were held?

A Yes. They were from March 15th to March 19, 1972.

Q It was thereafter as a result of those games that you sustained or had a great financial loss, is that your testimony?

A Well, I had a financial loss. Not a great financial loss.

Q After your situation with the ball games, would you describe your financial situation as being good or poor?

A It was $19,000 poorer than before.

Q I understand that. But if you had $20,000 and you lost $19,000, your position would not be good. But if you had $250,000 and lost $19,000, it might not be

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that bad.

Would you explain your answer, please?

THE COURT: I think it is all very complicated. Are you asking Mr. Barres whether after he lost $19,000 -- were you hard up then?

THE WITNESS: I was with $19,000 less.

Q I think you testified yesterday, did you not, that you had to come up with a way that you could make money back because you were hurting financially as a result of the loss in this baseball series, is that not true?

MR. LITTLEFIELD: I object. That's not what he testified to.

THE COURT: He can answer the question. Is that what you said?

THE WITNESS: I said that we had lost money on the operation.

Q And you wanted to come up with a way to raise money back, didn't you?

A That's what you said.

Q Isn't that what you said yesterday?

A I said yesterday that we had to do something in regards to it.

Q So you were concerned about your financial condition, were you not?

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A I have always been concerned about my financial condition.

Q After that ballgame or those ballgames, what would you say your net worth was at the time, if you know?

A I do not recall at this time because it was changing continuously.

Q Was it more or less than $250,000?

A I would have to go my financial statements to check that.

Q Was it as much as one million dollars?

A No.

Q Did you own property at that time of a value approximating one million dollars or less?

A I had bought property with the help of the United Merchants in San Juan where I put the warehouses of my company, that after being remodeled and repaired I had an appraisal of $850,000 for that property.

Q I am not certain of your answer. Are you saying, then, that after the baseball games were over that you had property or you owned property of a value of $850,000?

A I had a property that had an appraisal value of $850,000.

Q When did you have that property?

A I had an 18-month option to buy what was an old

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distillery in Carolina, with a total capacity of 170,000 square feet, that had been abandoned for years. I went -- found the owner that was the person here in the States and he agreed to give me an 18-month option on the property with a $5,000 down payment.

Q You didn't consider an option for property of $850,000 to mean that the value of that property was part of your assets, did you?

A No, sir. At that time was not my property and I did not consider that. When I closed the deed, it was then my property and the property of the bank that loaned me the money.

Q Are you engaged in business of a legitimate nature at this time?

A I beg your pardon?

Q Are you in business --

THE COURT: Are you in business now? That's the question.

THE WITNESS: I have been in business. Of course.

Q You have been. But are you at this time in business?

A I am in business.

Q One of those businesses is a concern known as Red Cent?

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A No, sir.

Q Is that name familiar to you?

A Yes.

Q What is Red Cent business?

A Red Cent Coin Company. That is a company that I sold them silver coins. As a matter of fact, the last coins that I sold them was in March of this year.

Q Were you a principal or partner in the operation of the Red Cent business?

A No. They were buyers of silver coins like coin merchants like anyone that is here in New York.

Q Is that one of the principals in that business an individual named William Cross?

A Yes, sir.

Q It is your testimony that you have nothing to do with him in business other than having sold him coins?

A That's right, sir.

Q Isn't it a fact, sir, that you in fact were engaged or are engaged in a business in which the object is smelting coins of the United States?

A Repeat that part again?

Q My question was, isn't it a fact that you are now or have been recently in the past engaged in the business whose principal purpose is the smelting of United States

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coins?

A I would like to answer --

THE COURT: Do you understand the question?

THE WITNESS: Yes. I would like to answer and clarify it.

THE COURT: Go ahead.

THE WITNESS: The question, to the lawyer.

A You said it is a fact that I have melt United States coins. Since 1969 there is a law in the United States that you are allowed to melt U.S. silver coins, but I did not melt silver coins because there is a market where you can get on the Wall Street Journal and read it, silver bags, and they are sold, the silver coins in bags. You don't have to melt.

Q Is it your answer, then, that you have not smelted or melted coins?

A I have not smelt. I don't have a refinery.

Q Are you also engaged in the distribution or importation of auto parts?

A I am engaged in the distribution and importation of auto parts.

Q Isn't it a fact, sir, that you are currently being investigated for nonpayment of federal excise taxes on those items?

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A It is not true, sir.

Q It is not true?

A It is not true, sir.

Q Do you know a Mr. Trilla?

A Yes.

Q Who is he?

A He owns a bus company in San Juan.

Q Have you in the past been engaged in any business with Mr. Trilla?

A In 1967 or '68 I obtained financing of his bus company business on James Talcott in Puerto Rico.

Q So the answer to my question is yes?

A Yes.

Q Was there a point in time when you and/or Mr. Trilla were seeking a substantial loan in the approximate amount of one million dollars from a bank in New York City?

A Not at all, sir. Mr. Trilla cannot ask for a million dollars to any bank.

THE COURT: The answer is no?

THE WITNESS: No.

Q It is a fact, is it not, that Mr. Veciana is an accountant or a certified public accountant, if you know?

A I have heard that he was a public accountant in Cuba.

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Q You don't know that?

A I don't know that.

Q But isn't it a fact, sir, that at one point you had asked Mr. Veciana to examine a financial statement submitted to you by Mr. Trilla?

A It is not a fact.

Q That is not a fact?

A Not at all.

Q Had you ever sought any advice from Mr. Veciana regarding your business ventures?

A Not at all. He is not familiar with the type of operation I have, sir.

Q For the past several years have you had occasion to go to Canada on business?

A Several years?

Q Within the past few years.

A I have been in Canada, yes.

Q On business?

A One time.

Q What was the nature of that business?

A To visit Mr. William Cross.

Q That is Mr. William Cross?

A Yes.

Q Who is associated with the Red Cent Coin Company?

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A The Red Cent Coin Company.

Q What was the purpose of your going to Canada to see him if you were merely a purchaser and seller of coins?

A I was here in New York, and Toronto is right there one hour from here. He could not make it and he was not paying me enough for the bag of -- or I had been offered from other people more payment for the bags of silver coins, and I --

Q You were dealing in silver coins with Mr. Cross, though, is that it?

A Yes.

Q You had occasion to travel to Panama in the last several years with regard to your business?

A Several years, no. I traveled to Panama one time when I get married with my wife.

Q Just on your honeymoon, then, is that it?

A Going on honeymoon with my wife. One time I have been in Panama.

Q Never on business, though?

A Well, while I was in Panama I went to see the representative of the Bosch Spark Plugs.

Q You recall yesterday that you were asked questions pertaining to a safety deposit box of a bank in Miami?

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A Yes.

Q Do you remember that, sir?

A Yes.

Q What was the name of that bank?

A Fidelity National Bank.

Q That is a bank, is it not, that deals to a large extent with Latin customers?

A I couldn't say if it does deal with Latins or not.

Q I think you testified and Exhibit 3 substantiates your testimony that this safe deposit box was in fact opened on October 5, 1972, is that correct, sir?

A Correct.

Q Would you examine Exhibit 3 and tell the Court and jury, please, how many times it is indicated thereon that you in fact visited the safe deposit box?

A I visit three times alone and one time --

Q The question is, how many times did you visit the safe deposit box?

THE COURT: He is trying to answer that.

A I visit three times alone and one time accompanied with a lawyer and a witness and the employee of the bank.

Q So the total number of times then is four times?

A Correct.

Q Was it your testimony that each of those visits

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to the safe deposit box was in conjunction with narcotics?

A It was my testimony that all but one time had to do with the narcotics.

Q I think you testified that you have been married twice, both marriages terminating in divorce, is that correct?

A Correct.

Q Who is Miss Adelfa Rodriguez?

A That was a girlfriend that I had in Miami.

Q Does she have a nickname?

A No -- yes. They call her China.

Q What does that mean?

A Chinese.

Q Is she still your girlfriend?

A No. She led me out also.

Q You lived with her for a period of time?

A I lived with her. She was my girlfriend and we were out and that type of thing, but she left me after this trouble I was involved.

Q Is it not a fact that you have for a period of time undergone psychiatric therapy?

A It is a fact that I have been in psychiatric in 1971.

Q For how long a period of time?

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A Nine months.

Q Do you recall where or in what city that treatment was given you?

A In San Juan.

Q What was the name of the doctor?

A Rivera Maldonado.

Q Do you recall from what month to what month that treatment was given you?

A The treatment was given -- the end was in February of 1972.

Q Did the doctor tell you at that time that you had no need for further treatment?

A Correct.

Q Have you been to any psychiatrist since that time?

A After that time I went -- after this trouble I have --

Q What trouble?

A The cocaine. This is my trouble. I went to the doctor, another psychiatrist, because I was too depressed with myself.

Q Was that the same type of psychiatric difficulty back when you went to the psychiatrist for nine months?

A No, sir.

Q Have you ever been hospitalized with regard to

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your psychiatric problems?

A No, sir.

Q Isn't it a fact that it was recommended to you that you do be hospitalized for a period of time?

A Not at all.

Q That had not been recommended to you?

A No, sir.

THE COURT: We will take a five minute recess at this point. You are excused for a few minutes, ladies and gentlemen.

(Jury not present.)

THE COURT: Mr. Littlefield and counsel, the witness just asked me if he could look at his passport.

MR. LITTLEFIELD: I will get that, your Honor.

(Recess.)

MR. BOITEL: I suspect, although I don't know, that since Mr. Littlefield received a package here this morning, I assume it is the missing scales.

THE COURT: Is that what it is?

MR. LITTLEFIELD: Yes, your Honor.

MR. BOITEL: To have some order to this, we might put them in now.

THE COURT: Would you prefer that?

MR. BOITEL: Yes. I would suggest that the

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People's case as to this witness ought to be completed since everything is apparently now here.

THE COURT: If you want to do that, would that be your desire too?

MR. GARBER: Yes.

THE COURT: You want to interrupt the cross for a few minutes and resume the redirect with regard to the scales only. That wouldn't preclude him from redirect later on when you fellows get through your cross. Are you agreeable to that?

MR. LITTLEFIELD: Yes.

(Jury present.)

THE COURT: Ladies and gentlemen, we are going to interrupt for a couple of minutes the cross examination of Mr. Garber so that the Government can offer another exhibit here that counsel feel should be done at this time.

You may proceed, Mr. Littlefield.

REDIRECT EXAMINATION

BY MR. LITTLEFIELD:

Q Mr. Barres, you had testified on direct examination about a set of scales, is that right?

A Yes.

Q The set of scales were used to weigh the cocaine, is that right?

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A Correct.

Q You said first that you had these postage scales, or something?

A Postage, yes.

Q They were thrown out?

A Yes.

Q Another set was then used, a bigger set?

A For the second shipment it was used a professional scale to weigh drugs, pharmaceutical drugs, or to weigh gold, small quantities, or --

Q Was this also used for the third shipment?

A Correct.

Q Then after the third shipment, what was done with it?

THE COURT: The scales.

A The scales was kept with the three kilograms of cocaine on the cabinet.

Q After you were arrested, you told the agents about that scale?

A I told the agents there were three kilograms of cocaine on the scale in that apartment.

MR. LITTLEFIELD: May we mark the box as Exhibit 12-A, please.

(Government's Exhibit 12-A marked for identification.)

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MR. LITTLEFIELD: Your Honor, may the record now reflect that I am cutting open the end of Government's Exhibit 12-A, which is presently sealed with tape. I am removing scales from the box which we will mark as Government's Exhibit 12 for identification.

(Government's Exhibit 12 marked for identification.)

xx

Q Let me show you Government's Exhibit 12 for identification and ask, Mr. Barres, if you recognize that.

A Yes.

Q What is that?

A The scale we were using for the cocaine weight.

Q You don't know if it is necessarily the exact same scale, but it is the same --

A The same type. It has 500 grams here. That is half a kilo.

Q You meausred the cocaine by putting the bag on the end?

A This is supposed to be here, you put it here and when it is on zero here, that is the weight. These are very sophisticated. You can weight up to a gram on these things.

MR. LITTLEFIELD: If there is no objection --

THE COURT: I understand there isn't.

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MR. GARBER: No objection.

MR. BOITEL: No objection.

THE COURT: Exhibit 12 will be received.

(Government's Exhibit 12 received in evidence.)

xx

MR. LITTLEFIELD: That is all, your Honor, on this.

THE COURT: You may continue, Mr. Garber, your cross examination.

CROSS EXAMINATION

BY MR. GARBER (Continued.)

Q Mr. Barres, when were you arrested on this charge which you ultimately pled guilty to on I believe Monday of this week?

A July 23rd I pled guilty.

Q Didn't you testify that you just pleaded guilty this past Monday?

A To the Judge.

THE COURT: I think you are a little confused on the legal technicalities. The question was when you were arrested on the narcotics charges to which you pled guilty before me last Monday, when were you arrested?

THE WITNESS: When I was arrested I pled guilty.

Q What you are saying, are you not, is that when you were arrested you gave a full statement indicating your

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involvement, is that right?

A Correct.

Q But really the first time that you appeared in court, as I understand it, was this past Monday at which time you pleaded guilty to the charge?

A No. I appeared -- well, in this court, yes. Not when I was bonded.

Q In this court?

A Yes.

Q You had earlier appeared, I believe, probably before a United States Magistrate?

A Yes, when I was bonded.

Q When you were arrested?

A Arrested.

Q It is a fact, is it not, that this charge against you was filed just this past Monday, the very day that you appeared in court and pleaded guilty, is that not true?

A It is true that this charge was filed.

MR. LITTLEFIELD: Your Honor, the information would always be filed at the time of the plea, so far as I know.

THE COURT: I know. The question is a fair one. Doesn't the document speak for itself?

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MR. GARBER: It does.

THE COURT: I don't think the witness knows about that. If you say the document says that the information was filed on Monday, the Government is not going to raise any point about that.

MR. GARBER: Yes.

Q Had you been told by any act of the Government why a criminal charge such as the one you pleaded guilty to this Monday had not been filed against you from the period of July 23, 1973 until January 7, 1974?

MR. LITTLEFIELD: Your Honor, the defendant was charged with a crime on July 23rd when he was arraigned before a United States Magistrate in this building.

THE COURT: I understand. In other words, there was a complaint?

MR. GARBER: There was a complaint, yes, sir.

THE COURT: The jury and I don't want to get into any of these legal technicalities, but a complaint was filed on July 23rd. All right.

Q Had you ever been told why an information, a criminal information, had not bee filed against you until perhaps eight months after your arrest?

A I have not.

Q It was during this period of time from your

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arrest up until the time you pleaded guilty on Monday that you cooperated with the Government, is that not true?

A I was on the Government office on July 23rd and July 24th, and I was not in any more Government office until the day that I cam here with my lawyer, January --

Q You are not saying that you have not discussed your testimony with the Government prosecutors or with agents in this case, are you?

THE COURT: I don't think that is what he said.

Q May I ask you then, isn't it a fact that you have discussed your testimony with agents of the Government and with Mr. Littlefield and other prosecutors prior to testifying here?

A I discussed -- they asked me questions in regard to this case.

Q How many times did they ask you questions?

A On July 23rd, July 24, 1973 and when I arrive here also.

Q When is that? When did you arrive here?

A I arrive here on the 3rd.

Q The 3rd of January?

A Yes.

MR. LITTLEFIELD: Your Honor, may I be excused?

(At the side bar.)

MR. LITTLEFIELD: Judge Kaufman has moved very quickly. He is ready for me now. Mr. Gordan says I will be done by 12:15.

THE COURT: All right. I will adjourn until 12:15. Let's adjourn until 12:00.

(In open court.)

THE COURT: Ladies and gentlemen, one of the lawyers has another engagement in another court which he has to go to at this time. We think, although we don't know, it might take about 40 minutes or so. There are two options, really. Would you like to take a luncheon break now and come back -- it is now twenty after 11:00, according to my watch. Say come back around half past 12:00 or a quarter of 1:00, or would you rather take a recess now and take lunch much later?

Which would you rather? Why don't we take our luncheon break now and let's plan to meet again at 12:30 or as soon thereafter as we can. Thank you very much. These things happen in these trials. It is not the lawyer's fault. It just happens. Forgive us.

All right, you are excused until half past 12:00.

(Luncheon recess.)

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AFTERNOON SESSION

12:30 p.m.

(In open court, jury present.)

THE COURT: Good afternoon, gentlemen.

A U G U S T I N B A R R E S, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. GARBER (Continued):

Q Had you been in New York during the period of time from your arrest up until January 3rd of this year?

A Yes, I have.

Q How many times?

A I don't recall, but I think maybe two times.

Q During those times did you have occasion to speak with agents of the Government in this matter?

A No, sir.

Q You did not?

A No.

Q You were charged with one count as compared with two counts against these defendants, were you not?

A I was charged with --

Q With one count?

A Yes. I guess.

Q When did you first begin your cooperation with the

cooperation with the Government in this matter with regard to giving statements to them?

A My cooperation, if you refer did I declare myself guilty, was on July 23rd.

Q When you say declare yourself guilty, you are talking about the statement you made to them, is that right?

A The statement.

Q Prior to giving that statement about the facts of this case and your knowledge of the facts, did you have any discussions or conversation with agents of the United States Government?

A At the time of my arrest.

Q Were you told that it would be to your advantage if you cooperated?

A I was told by them to tell the truth of everything I knew.

Q Were you also told that it would be to your advantage if you cooperated?

THE COURT: I think that is sort of a complicated expression for a Spanish-speaking fellow. I guess the question, did the agents say it would help you if you cooperated.

THE WITNESS: No, they did not mention that fact.

Q They did not say that? At any time, whether

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it was ehen you were arrested or as recently as the day you entered your plea, I believe on the 7th of January, 1974, were you told that it would help you if you cooperated and pleaded guilty?

A No, I have not been -- they always requested me to tell the truth of what I have done. It was better always to say the truth than to say half truths.

Q Mr. Barres, as a matter of fact, you have hopes of receiving favorable consideration in exchange for your cooperation in this case, don't you?

A You should ask that to the Judge. Not to me.

Q I am asking you.

THE COURT: He can ask you that.

A I am not the one that give the sentence.

THE COURT: Wait a minute. I don't think he understands.

Are you hopeful that by your cooperation you may get better treatment? Do you hope that?

THE WITNESS: Nobody has promised me that.

THE COURT: I didn't ask you whether you were promised that. I asked you did you hone you might. Do you have any hopes you might?

THE WITNESS: It could be possible.

Q Is it possible that you do have such hope?

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A Could be possible, yes.

Q You are saying that you do have such hope that your assistance and cooperation will ultimately help you, aren't you?

A Will you repeat that question again?

(Record read.)

A I say because I have been -- this is my first time, maybe I can have an opportunity to -- not to be with this -- if I have been a delinquent for many times.

Q Did you at one time in your direct testimony cescribe your activities in this case as being sort of play acting? Did you say that? That you were sort of acting out your role?

A Yes -- acting what?

Q Acting our your part in this?

A In one part yes, I did.

Q By acting out, when you use that term, you include your negotiations for a purchaser of narcotics in New York, do you not?

A Correct. It was with the gangster.

Q And your reliance upon the fact that you felt you had contacts with people, to use your word, that may have been in the Mafia?

A Do I realize?

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Q No. When you say you were acting, in using that word you are also including the fact, are you not, that you felt you had some contacts in New York in the Mafia that may be able to buy this stuff?

A The only person that I have ever heard talking about Mafia that I have heard in my life was this fellow Tony.

Q You felt that he was Mafia or had Mafia connections, did you not?

A At least I understood that.

Q You told the jury that you did?

A Yes, and I was mistaken completely.

Q As part of your play acting in this case, you also entered into negotiations and price discussions with potential buyers, did you not?

A I can't understand your question.

Q Again, we will say you testified that you were play acting in your role in this transaction, is that correct? You were acting?

A I had to simulate that I was a gangster.

Q You were acting then, that's the word you used?

A Correct.

Q As part of that acting isn't it true that you entered into negotiations for the sale of narcotics?

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A I had entered negotiations with the undercover agent, with the cousin.

Q As part of those negotiations you talked back and forth about price until a price was finally realized or set?

A No, the price was good for me the first time we talked.

Q The first time you talked?

A Yes, because it was a lot more than what had been paid in Miami.

Q As part of your play acting, isn't it true that you also made statements about how fine or how good a quality your merchandise was?

A I made those statements. Sure.

Q You even told them of percentages, didn't you?

A Exactly.

Q And you are telling us that this is your first involvement in narcotics transactions?

A It was not the first involvement. It was --

Q This series.

A It was the third time.

Q Let us, if you will, confine your thinking to the area of July 21, 1973. All right? On July 21, 1973 did you see Antonio Veciana?

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A Yes.

Q July 21, 1973.

A Saturday, July 21, 1973.

Q Where did you see him at?

A Italian Village.

Q What was the address of that?

A 111 was the number of the apartment. That's 4335 South Miami Canal Drive.

Q On the 21st of July, 1973 it is a fact, is it not, that you, although seeing Mr. Veciana, never at any time on that date saw him in possession of any narcotics?

A I did not see Mr. Veciana in possession of the narcotics.

Q The only thing you know is what someone told you regarding Mr. Veciana and narcotics, is that right?

A Correct.

Q When you testified about narcotics being transferred from Mr. Veciana to Mr. Pomares, you didn't see that happen, did you?

A No, I did not see happen.

Q You only say that because that was told to you by someone, is that not true?

A Correct.

Q During the course of the time that you met and

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came to know Antonio Veciana, didn't you learn that he had been an employee of the United States Government in Bolivia?

A Yes. I don't know if he is an employee of the United States Government, but it was the Government bank.

Q He was an advisor to a banking system in Bolivia on behalf of the United States Government, is that what you are saying?

A At least that is what Mr. Veciana told me.

Q You had no reason to doubt that, did you?

A I had no reason to doubt that.

Q As a matter of fact, you probably learned that from some other people as well, did you not?

A No. Some people -- what I heard was that he was a CIA agent.

Q You heard Mr. Veciana was a CIA agent, is that correct?

A Yes, that's what I heard.

Q Who did you hear that from?

A From people that --

Q Who?

A I can't recall at this --

Q When did you hear it?

A Oh, many times, there was gossip of talking in San Juan that he was an agent for the CIA.

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Q An agent for the United States Government, is that right?

A For the United States Government, no. For the CIA, Central Intelligence Agency, which sometimes is different.

Q Do you know whether that is also true as of this time?

A I don't know if he is an agent or not.

Q I had asked you previously about your acquantance of a Mr. Trilla, and I think you indicated that you in fact knew him; is that right?

A I know Mr. Jesus Trilla, sure.

Q Let me see if you recall whether at one point Mr. Trilla had given you or had someone give to you a financial statement concerning Trilla personally or Trilla's business?

A No. I had financial statements of Trilla's company that I brought in to New York to United Merchants to looking for financing.

Q Looking for a loan?

A For a refinancing of a loan that he has now with Congress Credit or he had at that time with Congress Credit Corporation.

Q You were trying to help Trilla obtain a loan

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or refinancing?

A Refinancing $400,000 that he had with Congress.

Q Did you ever discuss the contents of Trilla's financial statement with Mr. Veciana?

A I did not discuss the financial statement with Mr. Veciana because he was not an accountant.

THE COURT: You say the answer is you didn't discuss it?

THE WITNESS: I did not discuss.

Q You said Mr. Veciana was not an accountant?

A I didn't say that he is not an accountant. That I never requested his service as an accountant for me. I don't need it.

Q Do you know if Mr. Veciana knew Mr. Trilla?

A Mr. Veciana never met Mr. Trilla.

THE COURT: So far as you know?

THE WITNESS: So far as I know.

(Defendant Veciana Exhibit B marked for identification.)

xx

Q Mr. Barres, I show you Defendant Veciana Exhibit B for identification and ask you if you know what it is?

A This is Veciana's exhibit or Pomares' exhibit?

Q What is the difference?

THE COURT: It doesn't matter.

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THE WITNESS: Because Pomares had a document like this.

THE COURT: All he wants to know is have you ever seen that document before, sir?

THE WITNESS: Yes. Of course. I had this document in the month of July.

Q What is it?

A Financial statement.

Q Of who?

A Of Jesus Trilla's Puerto Rico motor coach.

Q Financial statement of Mr. Trilla?

A Yes.

Q And a business of his, is that correct?

A Yes.

Q Do you know of any reason, sir, why the financial statement of Mr. Trilla which you said you had not shown or had no knowledge of Mr. Veciana knowing anything about would be in Mr. Veciana's possession, unless you had shown it to him?

A If you want --

THE COURT: I don't think he has to answer that.

THE WITNESS: I can answer.

THE COURT: No. You say you didn't give it to him?

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THE WITNESS: I didn't give it to Mr. Veciana.

Q You did not give it to him on the 21st of July, 1973?

A I did not give to Mr. Veciana any financial statement of any kind.

Q Did you give such a statement to Mr. Pomares?

A Mr. Pomares had access, of my documents, he was bringing that document sent by Mr. Bianchi from San Juan to me.

Q What was Mr. Pomares to do with that document?

A Mr. Pomares was a kind of right-hand man for me on financial things since 1971.

Q So you gave that document to Mr. Pomares and you gave him instructions with it?

A I believe the one that could clarify more than anyone else the statement is Mr. Bianchi, Mr. Trilla, to see who they gave the statement to, to see if they know Mr. Veciana.

Q Do I understand you to testify that you gave a copy of that statement to Mr. Pomares who was your right-hand man?

A This financial statement was being sent to me by Mr. Bianchi and Mr. Trilla to Miami, and he didn't give it to me, and he kept the financial statement because it

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was during that period of time when this thing happened. I had a meeting with United Merchants here in New York to give the latest financial statement.

Q You testified to two prior narcotics transactions -- when I say prior, I mean before July of 1973 -- is that not true?

A It is true.

Q What were the dates of those two transactions again?

A I don't recall at this moment. I already gave that information.

Q You mean you forgot since you testified yesterday?

A I told you here yesterday --

Q I am asking you again today.

A Well, one of the transactions was in 1972, the late part of August.

Q August of 1972?

A Late part of August, beginning of September, 1972. The other was in April, 1973.

Q Did you testify that you got involved in these narcotics transactions because of losses you sustained in the baseball promotion?

A Did I testify?

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Q Yes.

A Among one of the things that I went into the narcotics was that I had money on property what I didn't have liquidity, cash.

Q So you needed cash?

A Cash.

Q With regard to the August, 1972 transaction, is it your testimony before this Court and jury that Mr. Veciana was in Miami, Florida at that time?

A With regard to August, 1973 --

Q '72.

A It is what?

Q Is it your testimony --

THE COURT: He wants to know whether in August, 1972 Mr. Veciana was in Miami, Florida.

THE WITNESS: It was at the late part of August, 1972 or early September, 1973, Veciana was in Miami.

Q How do you specifically recall Mr. Veciana's being in Miami on or about those dates?

A Because he wanted to deliver the cocaine to me at the Crossway Inn Motel.

Q Are you able to tell us within a two or three-day period when that delivery took place?

A I don't recall, sir. You know, it is impossible

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to know exactly the date. I would be lying to you.

Q But you don't know specifically if it was August or September? It was in that area?

A The late part of August, early September.

Q How about the April transaction? Is it your testimony that Mr. Veciana was in fact in Miami, Florida on that date?

A Yes, sir.

Q How do you fix that in your mind?

A How did I fix that in my mind?

Q Yes.

A Because it was -- if we had done many transactions, then I could not remember about each one of them. But because we had -- we did three only, I remember more or less in the area. Now, if you tell me April 8th, April 9th, I would be also lying to you saying that, because I don't know.

THE COURT: You don't recall the exact date?

THE WITNESS: The exact date.

Q Have you ever had occasion to wear a wig?

A Do I have occasions to wear a wig?

Q Yes.

A In 1969 I used a wig for about two times.

Q Is that during the course of travel in and out

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of the United States?

A No. I didn't travel in and out of the United States with a hairpiece.

Q You did not?

A No. You can see my passport has a picture there with -- well, wait a minute. I went to Spain in 1970, late part of 1970 with my wife and my two kids, and I took the wig on the trip. It was very embarrassing every time they look at the passport.

Q With regard to this baseball promotion, at one point did you send $10,000 to Mr. Veciana?

A I have never sent $10,000 to Mr. Veciana for -- I gave $10,000 to Mr. Veciana in advance for the Cleveland game, that is right.

Q You did give him --

THE COURT: For the what game?

THE WITNESS: The Cleveland-Cincinnati, I gave him $10,000.

Q How did you give that to him, check or cash?

A I think we sent -- I don't recall what, but I think we send it through the First National City Bank.

Q Do you recall the approximate date of that transaction?

A It had to be February or March of 1972. No, not

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March. February.

Q That was for use in promotion of the game?

A That was for use of the Cincinnati and Reds.

MR. GARBER: I have no further questions.

THE COURT: All right, Mr. Boitel.

CROSS EXAMINATION

BY MR. BOITEL:

Q Mr. Barres, we have never met before, have we?

A I don't think so, sir.

Q You are a resident of Puerto Rico, is that correct?

A I am -- I was a resident of Puerto Rico, I am a resident of Puerto Rico, yes.

Q And as a resident of Puerto Rico, you pay taxes to the United States Government, is that correct?

A No, it is not correct.

Q Would you explain that to me, please?

A I pay taxes to the Commonwealth of Puerto Rico.

Q You file no United States income tax returns?

A I didn't have to file any U.S. income tax return unless the transaction is made here in the United States.

Q Is it not true that --

MR. LITTLEFIELD: Your Honor, are we going to get into a question of tax law? I don't know the tax law.

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We can bring an expert in if we have to.

MR. BOITEL: I am not getting into any --

MR. LITTLEFIELD: I object to that question.

THE COURT: He has given his answer.

MR.BOITEL: I will accept it.

Q But you have had transactions in the United States, have you not?

A I have an Internal Revenue Service case, and it is still not even a case. I had an Internal Revenue Service investigation, because I sent --

Q An investigation of you?

A An investigation of me, like they have now of Mr. Nixon also, that I sent to the achievement of the Dominican Republic gold coins to be melted, I have refinery here in the United States. Because of a technicality, they said -- Internal Revenue Service said that I was supposed to file a U.S. form for that shipment because the change of property passes here in the United States and not in Puerto Rico, because they didn't pay me the date I ship it but a few days after when it came out of the refinery.

That is being discussed and this is a matter of legal interpretation.

Q That related to the melting of coins, you say?

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A Melting of Dominican Republic coins.

Q Have you engaged in the melting of any other coins?

A Not at all. I don't have a refinery, sir. I sent it to --

Q Excuse me, sir. If you can, please answer my question with a yes or a no. If you want to elaborate, we will give you the opportunity.

A All right. I'm sorry.

MR. BOITEL: May I have the question put to the witness?

(Record read.)

A I have been engaged in the melting of Dominican Republic coins.

Q The question is, have you been engaged in the melting of any other coins besides Dominican Republic coins?

A No, sir.

Q Is it not true that you engaged in other business ventures in the United States besides coins that may come through the United States?

A In what year, sir?

Q During the period from 1971 to date.

A 1971 to date, yes. I have been engaged in the

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real estate here in the United States, on the financing of that property that had been expropriated from me in Miami and also we have done sales of merchandise here in the United States.

Q What merchandise?

A Wholesale auto supply.

Q Spark plugs, maybe?

A Spark plugs, filters, STP. We are feeders to discount stores all over the country, in the States and in Puerto Rico.

Q Was there anything else you wanted to tell me about your business ventures in the United States?

A Ask me, I will tell you.

Q Are there any other business ventures that you have engaged in in the United States during the period from 1971 to date besides those you have just mentioned?

A That I recall at this moment, the real estate things, the sale of merchandise of importers and the cocaine.

Q Oh, yes, that was one of your business ventures as well?

A Correct.

Q I ask you, have you filed a United States income tax return during the period from 1971 to date?

A Myself.

Q Yes or no.

A I have not --

Q You personally?

THE WITNESS: Can I answer the question after saying -- can I explain my question?

THE COURT: Answer it and then you can put any explanation you want.

THE WITNESS: No.

MR. LITTLEFIELD: Your Honor said he could make an explanation.

MR. BOITEL: I was just going to ask him to make an explanation.

THE WITNESS: The question is you are asking me as a person, and these are corporations.

THE COURT: You are saying that you didn't file personal returns, but these were corporations?

THE WITNESS: Corporations, yes.

Q You were engaged in the cocaine business, weren't you?

A Yes.

Q Were you engaged in the cocaine business as a corporation?

A No, sir, but that --

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Q Excuse me. Yes or no.

A This happened during 19 --

MR. BOITEL: Will your Honor please instruct --

THE COURT: Wait a minute, just relax. He is trying to do the best he can. The question is, the cocaine business you didn't handle through a corporation, did you?

THE WITNESS: No, that was personal.

Q Did you make a profit in the cocaine business?

A No, sir, I have not.

Q You didn't?

You made no profit?

A I have not made profit.

Q Let's go back to the first transaction, Mr. Barres. I recall that you wrote some figures on the bulletin board there. What was the amount of profit that was allocated to you from the first transaction?

A $12,500.

Q $12,500.

When did that money come into your possession?

A At the late part of 1972.

Q Can you be more specific?

A It could have been on October, if what you are trying to say that I didn't --

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Q I am not trying to say anything, sir. Please don't answer that I am trying to say. I am asking you questions. When did that profit come into your possession?

A It never actually came into my possession because I send the profit plus my original investment to Bolivia.

Q Did there come a time when $12,500 was given to you in late 1972?

A Right.

Q Was that money placed in a safe deposit box? Withdrawn.

Where was it put?

A In a safe deposit box.

Q Is that the box we have been talking about, the box at the bank?

A Yes.

Q At that point did that money belong to you?

A It belonged to me and to Pomares.

Q The total amount of money in the box was how much?

A The total mount of money in the box I couldn't recall at this time because we have been in and out and not all the money that we had was put on the safety deposit.

Q Was it not your testimony yesterday under direct examination that Mr. Pomares, according to you, engaged

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in a transaction with somebody called The Midget and returned with a certain amount of money?

A Yes.

Q How much money did he return with altogether?

A Well, altogether was five times 12, $60,000.

Q $60,000?

A Yes.

Q How much of that $60,000 was to be used for the expense of the operation which had just been consummated?

A How much?

Q Yes.

THE COURT: I am not sure he understands that question. He wants to know, as I understand it, you got $60,000. What was your expenses in getting --

THE WITNESS: It cost $20,000, the cocaine.

Q To the source, is that correct?

A Yes.

Q $20,000? That left $40,000, did it not?

A Correct. Had to be divided between three partners.

Q How was that to be divided?

A You had to divide it in the following way. $3,000 per kilo to Veciana, $2,500 to Barres, $2,500 to Pomares.

Q Do you recall how much the total amount was for

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each person?

A How much? Pomares had the same amount as me, $12,500.

Q 12-5 to you?

A Yes.

Q 12-5 to Pomares?

A And $15,000 to Veciana.

Q How much went into the safe deposit box?

A I don't recall.

Q There was 12-5 to you and 12-5 to Pomares, right?

A Yes.

Q That is $25,000, right?

A Yes, but in addition to that there was the cost of the cocaine. It had already been collected, everything.

Q Excuse me, I don't understand. I thought your testimony was that $20,000 came off the top to pay for the cocaine which had been used to earn or to bring in the total of $60,000; is that correct?

A Well, the first time it was an operation that was very simple.

Q We are talking only about the first time, sir. Let us forget about the other times for the moment.

A We did not go first to get the $10,000 from Veciana and the $10,000 for me. As the money start

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coming, we gave part of the money so he could go and buy again in Bolivia and had not been collected everything, and that's the reason why we had to keep the money. But the only one actually that on the first transaction had any cash with him was Pomares, because I invested my $12,500 with the $10,000 for the second trip.

Q When was the second trip?

A I think it was by October.

Q October of the same year?

A He went to Bolivia in October to deliver -- to buy the stuff for the second shipment.

Q And he brought with him your $12,500?

A No, sir.

The second shipment did not arrive until March, 1973.

Q I know. I don't know, but I understand that to be your testimony.

However, the $12,500 that was supposed to be your share from the first transaction, when was that paid over to Veciana?

A It was in October given the money to him. The only person that got money, cash, from that first transaction was Pomares that was not investing money. He was being paid for his connection.

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THE COURT: As I understand it, your testimony is that as you collected money from the first shipment, when you got enough, you say, you gave $12,000 to Mr. Veciana in connection with the second shipment?

THE WITNESS: I gave $22,500.

THE COURT: $22,500 in connection with the second shipment?

THE WITNESS: Yes.

Q So you gave to him not only your profits but money in addition to that?

A The original investment of $10,000 and $12,500. $22,500, which was half of $45,000 for 10 kilograms.

Q When was the second time that money came in?

A That second time, you mean the second time that the shipment arrived, by around April.

Q How many kilos was that?

A Veciana had ordered 12 kilos and came only 10 kilos.

Q How much of that 10 kilos was ultimately sold?

A From the 10 kilos, ultimately sold -- I know five -- from the 10 kilos there was a shortage to nine and a half. Then from those nine and a half, five were collected, left four and a half kilos. Half was damaged, left four kilos. One and a half was not collected yet at the time

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of this third shipment, so it left us with two and a half. Actually I would say total sale was seven and a half kilos.

Q What happened to that other two and a half?

A One and a half kilos was either collected by Pomares or either lost -- not paid to The Midge, and half a kilo was lost in a mixing that The Midge was trying to see if he could cut -- in, that's two kilos, and half a kilo came short of the 10.

Q We started with 10. In fact, it was not 10, it was nine and a half.

A Yes.

Q Five kilos went to The Midget, is that correct?

A He paid for five kilos.

Q That left four and a half?

A Four and a half.

Q Of the four and a half was ruined because of an experiment in cutting?

A Yes.

Q That left four?

A Four.

Q From those four,one and a half was sold but never collected on. Who was it sold to?

A It was sold through The Midget by Pomares.

Q So The Midget actually got six and a half but only

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paid for five, is that correct?

A Correct.

Q That leaves two and a half. What happened to that two and a half?

A We say six and a half sold. Half lost originally on the weighing, that's seven.

Q Half lost in the cutting. That is seven and a half?

A Seven and a half.

Q We have two left, is that correct?

A Those were sold.

Q Sold to whom?

A By The Midget.

Q Were you paid for that?

A I didn't handle that shipment. On that shipment Pomares handled the whole transaction. As a matter of fact, you will see an entrance on the bank where I went to pick up $10,000 during that period of time.

Q Finished? Did anyone ever tell you that that final two kilos had been sold and paid for?

A The two kilos were sold and paid for.

Q The final two kilos, the two we were just talking about.

A If I can explain --

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Q Explain.

A This transaction was for a long period of time, the sale of the last shipment of nine and a half kilos, and I was not following the -- how I can say --

THE COURT: Day to day?

THE WITNESS: The day to day situation, because it took time. I am just repeating what Pomares had told me and I also had written in a paper that whole detail, but evidently the police lose that paper, because I don't have it.

Q You wrote it in your own hand?

A Both hands, Pomares and mine. It was written in Pomares and my hand. He had half of it with his letter and half in mine. He was taking notes.

MR. BOITEL: I requestion production of the document --

THE WITNESS: It doesn't exist --

MR. BOITEL: I am not asking you. I request production of the document.

MR. LITTLEFIELD: The Government doesn't have it and doesn't know of it.

MR. BOITEL: I request that the Government make an investigation as to the whereabouts of the document this witness referred to and to make a search for it and turn it

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over.

THE COURT: He will make inquiries. The witness understands the Government lost the document.

MR. BOITEL: That is hearsay.

Q Who did you turn it over to, sir?

A I didn't turn it over. It was taken from my briefcase when I was put under arrest, and I --

Q Who took it from your briefcase?

A The police. I notice that --

Q What policeman, if you know?

A I don't know who search my bag. There were many people there. The thing is that they took photostatic copies of all my documents that I remember, and I noticed that because they put a copy, a Xerox copy of something that I didn't have any Xerox copy, so I figured they took copies of everything. They say here are your documents back altogether. I look at that paper that I had written that down, and the paper was not in there. And they didn't even search me well the first time. I had the paper of how was going to be the transaction, and I throw the paper when I was on the toilet of the West Gate jail.

THE COURT: Not West Gate, West Street.

THE WITNESS: West Street, I am sorry.

Q Now you have no recollection of how those final

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two kilos were disposed of or whether you were paid for them?

A In accordance with what Pomares had told me of this -- remember, he had one signature with me on my business. He was like a right-hand for me since 1971. I had big confidence on him, and he nad told me that one and a half kilos had never been paid to him, and the half kilo had been lost with The Midget, on the cutting.

A half kilo was short. That's what he told me.

Q Excuse me, sir, I am having difficulty following you.

MR. BOITEL: With your Honor's permission, may he go to the blackboard and diagram out the disposition of these two kilos, because I keep missing these two kilos. someplace?

MR. LITTLEFIELD: The Government has no objection. I encourage that.

THE COURT: You were very good on the blackboard. Go ahead.

THE WITNESS: Arrived, nine and a half.

Q Would you indicate to whom it is sold? Please indicate in parenthesis to whom the 2.5 was sold.

(Witness draw on blackboard.)

Q Next to the "Sold Midge five" kilos, would you put a dash and put the amount of money that came in from

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that particular sale?

A I have to figure it here.

(Pause.)

A (Continuing) It worked in the following say, that shipment. $14,000 total. Pomares had told The Midget that he had to pay $12,000 on this side. Was leaving $2,000 from which already Midge was making $500. From the $1,500 Midge became a partner then and was getting half. So it is $14,000 less $1,250. We were receiving $12,750 instead of $12,000.

Q For five kilos?

A Per kilo, sir.

Q Would you please put next to the five kilos the total amount of money received.

(Pause.)

MR. LITTLEFIELD: Perhaps that would be half. 2.50 would be half of $63.750.

Q So you have totalled it and the total amount received by you and those who were involved with you was $95,625?

A Correct.

Q What happened to that money?

A From that money, $66,500 to Veciana for his share and his original investment. We deducted the shortage of a

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half a kilo. Of those $29,125 there, before I came to New York, I had to take $10,000 from the safe and we had not divided.

Q Excuse me. The initial paper profit on the first transaction combined for you and Pomares was $25,000, is that correct?

A No, sir. The initial -- on the first five kilos?

Q Yes. On the first transaction. Not this one. The first one. This is the second transaction.

A $25,000.

Q Who was supposed to share in that $29,000?

A From this money we had to receive the balance from The Midge and we had to share between Pomares and myself.

Q At that point you had only made a little more than $4,000 on this second transaction, is that correct?

A Well, it happened that we had to -- Veciana lose his car in San Juan, so we have to give him $6,500 in addition.

Q It is clear, then, that as of this point there was a profit, if only on paper, but a profit, is that correct?

A Correct, sir.

Q Did you report that profit to the Commonwealth of Puerto Rico on your income tax returns?

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A Neither Mr. Pomares nor myself reported.

THE COURT: He is asking about you, not about Mr. Pomares.

MR. BOITEL: May we have a bench conference, your Honor?

THE COURT: No. All right, he is asking you, did you report it?

THE WITNESS: I did not report it.

MR. BOITEL: I ask this witness be instructed --

MR. LITTLEFIELD: Your Honor, that was a preposterous question, did he report the cocaine money on his income taxes. Good heavens.

THE COURT: I know. He didn't report it. He didn't report it.

Q When were you arrested here, sir?

A When I was arrested here, I had ---

Q I asked you when you were arrested here.

A July 23rd.

Q Of 19 --

A '73.

Q Immediately thereafter you admitted your guilt in all these things, did you not?

A Yes.

Q It has now been a matter of public knowledge that

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you were guilty of trafficking in cocaine?

A I was what?

Q It is --

THE COURT: I don't think it matters whether it is a matter of public knowledge.

Q Have you since revealed your complicity in the cocaine business, as you call it, have you since then attempted to pay income taxes or report the income to the Government for income tax purposes with regard to any of these cocaine transactions?

A No. I am waiting to -- can I explain the question?

THE COURT: Yes.

A (Continuing) No, I have not filed because I have until April 15th of this year and I am going to file an income tax for this year with the correct thing and a reconsideration to last year for this case. For tax purpose, the income is for cocaine income, they accept it. But losses, they don't.

Q For tax purposes, you are liable for $12,500 on the first transaction?

A Correct.

Q And substantially more on the second transaction? Is that correct?

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A If they can arrive to the figure.

Q Have you discussed this matter with the Internal Revenue Service?

A I have on top of me the Internal Revenue Service and I have Immigration also.

Q Have you arrived at a figure as to your income tax liability --

THE COURT: No, I think you have explored this. He said he is going to file a return in April and he has been talking to the Internal Revenue. They have made inquiries about your income taxes?

THE WITNESS: Yes, sir.

THE COURT: That is a matter they are negotiating. I think that is enough.

Q You say this is currently under negotiation?

A Not negotiation. I cannot negotiate with them. That's a one-sided thing.

Q Have you received some extension to file for 1972?

A I am at this moment a delinquent also on the 1972 tax.

Q Did you file an income tax return in '72?

A I file it late, but I didn't put everything I had to put it in there.

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Q Do you have a copy of that return with you?

A No, sir. If you had requested, I would have bring it from Puerto Rico. I thought we were going to have a case in court, not a tax examination.

Q Were there other things --

MR. LITTLEFIELD: Your Honor, I think any fencing at this point, everyone should calm down --

THE COURT: What is your question?

Q Were there other things which you did not report on your income tax returns?

A I don't recall at this moment. If you know more of my life than me, then you remind me.

THE COURT: You say you don't recall anything else?

THE WITNESS: I don't recall.

Q Why did you enter into the narcotic or cocaine business in the first place?

A Because I was running short of cash.

Q You were financially hard-pressed?

THE COURT: No. He said he was short of cash. I think that's an answer.

Q Were you hard-pressed financially?

A I was short of cash. Liquidity. I had assets.

Q You were hard-pressed for liquid cash, is that correct?

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MR. LITTLEFIELD: He just said he had assets.

THE COURT: I think this is just a play on words. He said he was short of cash. Needed cash.

THE WITNESS: I had liquidity, sir. I had assets. But I couldn't raise cash.

Q What was the total value of your liquid assets?

A Of my liquid --

THE COURT: He said he was short of liquid assets.

MR. BOITEL: I'd like to know what the total value was of his liquid assets as of the time that this alleged conspiracy commenced.

THE WITNESS: I would have to go to San Juan and get my financial statements, because I don't remember.

THE COURT: Do you have any estimate?

THE WITNESS: No, sir.

Q Was it more or less than $100,000?

A No, that was in 1973. Cash on hand from the different things I had, about ninety some thousand dollars.

Q What I am trying to ascertain, Mr. Barres, is what you mean when you say you were short of liquid cash. What was your liquid cash balance, approximately? What do you mean by short? What did you have?

A I have to explain that I have to pay notes due

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and things that were and things that were on time to the banks, and I had not the availability to raise the cash.

THE COURT: In other words, you had loans which you had to pay and you were short of cash from which to pay your loans?

THE WITNESS: For big amounts of money.

Q When you left Cuba, approximately how much did you have with you?

A I don't recall at this moment because I had done some transference of money after I have been here in the States. But I would say all in total, around $10,000.

Q A total of $10,000?

A About $10,000.

Q Was that liquid assets?

A Yes.

Q When you left Cuba, you say you left under a false identity?

A Under what?

Q A false identity.

THE COURT: Wait a minute.

A No, I didn't say that.

Q Excuse me. Did you say that your mother owned some kind of a hotel?

A My mother has a hotel.

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Q I thought you testified that she gave you some sort of papers.

A I was in theory an employee of her hotel because I was half -- part owner of the hotel because of my father left the hotel to us, but I never took advantage of that.

Q I ask you what role that had to do with your leaving Cuba.

THE COURT: You talked about identity.

MR. BOITEL: I was under the mistaken ~~identity~~ that he was talking about false identity employment papers.

THE WITNESS: What role? If I put on that identity there to leave the country as an assistant secretary of communication, I would never have been able to go out of Cuba. So I put employee, hotel in Cienfuegos, Cuba.

Q Who signed the paper?

A The bureaucrats.

Q Did your mother sign the papers?

A No. I filled my own request.

Q How much cash did you have with you as you flew on the airplane to the United States?

A On me?

Q Yes.

A None.

Q None?

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A No. $5 is what they allow you, if you didn't want to go -- they search you.

Q Where did the $10,000 in assets come from?

A I had been transferring that through a friend of mine named Oscar Alvarez to the States. Mr. Pomares come --

Q Please.

A I tell you how that operation of selling pesos and dollars works.

THE COURT: Don't get us into that. You said you had $5 with you but this friend of yours had arranged a transfer of about $10,000 into the United States?

THE WITNESS: Yes.

Q Is it that $10,000 -- what was the first job you had?

A The first job I had in Puerto Rico, I was for two months I was a salesman on the street selling lamps and furniture and that type of thing, and then --

Q Were you paid a salary?

A No.

Q Did you make a commission?

A I wasn't ever able to collect -- I sue the person.

Q You never made any money?

A In two months, no. That is why I had to get a job, pay salary.

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Q For those first -- how long was it, two months?

A Two months.

Q You lived on your -- off your $10,000, is that it?

A Well, remember, this is 1961, not now.

THE COURT: Still, you lived on your $10,000?

THE WITNESS: But I had plenty, with $10,000 in 1961, at the rate that was going, I had more than plenty to live for many, many months.

Q Then you came to have another job?

A I start working for Farnsworth Construction Company.

Q How long after you arrived here did you start working for Farnsworth?

A How long? About two months after I arrived in the States.

Q What was your salary with Farnsworth?

A I started with $50 a month and $75 car allowance.

Q Did you have a car?

A At that time? I was able to get a car, yes. Falcon.

Q Was it a new car?

A It was a 1960 Falcon.

Q How much did you pay for it?

A $65 a month.

Q How much did you pay for it?

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A This is a question I couldn't answer to you. I don't remember at this time.

Q You paid for that out of the $10,000, didn't you?

A No. I was paying per month.

THE COURT: He was paying $65 a month.

Q You made a down payment, didn't you?

A I make a down payment of $350 with Mr. Martin in the Chase Manhattan Bank.

Q That $350, did that come out of the $10,000?

A Yes.

Q So during those first few months the $10,000 was depleting, is that correct?

A No, you are incorrect.

Q Tell me why not.

A Because I was making more than enough money of my own, because for a year and a half, close to two years, I worked from 7:00 o'clock in the morning until 1:30 at night, every day, during the whole year I had two Sundays off only during that period of time, working for Farnsworth, doing accounting work for other people, working what they call moonlighting.

Q Excuse me, sir. I am talking about the first two months or so of your stay here in the United States. Isn't it your testimony that you started out with $10,000

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and that you lived off that $10,000 during those first months and that you made a down payment for a car out of that $10,000, is that correct?

A No. I got the car when I was already working for Farnsworth.

Q So then you purchased a car after you started working at Farnsworth?

A Yes.

Q You purchased that out of the $550 a month that you were making?

A From the $550 and the $75 car allowance.

THE COURT: I think we will take a recess at this point. Ladies and gentlemen, you are excused for a few minutes.

(Recess.)

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(In open court, jury not present.)

MR. LITTLEFIELD: I don't know if we are approaching the level of reasonable relevance.

THE COURT: I think we have exhausted the last subject. I am inclined to agree with that.

MR. BOITEL: Your Honor, I would like to move for a mistrial for two separate reasons. First -- perhaps the witness ought to be excluded from the room at this point

THE COURT: All right, go to the next room, please.

(Witness leaves courtroom.)

MR. BOITEL: Number one, this witness has on a number of occasions during this testimony referred to my client as being the best source of information or has referred to my client as knowing things that he knows. Therefore, we can find that information out from my client.

It seems to me that is an improper reflection upon my client's right not to produce any evidence at this trial.

Secondly, I find now for the first time, according to this witness in any event, that a document exists inculpating my client, or allegedly inculpating my client which was turned over to the Government.

Now, I think if such a document were turned over to the Government and if it has been lost, that

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the reference to such a document in the presence of the jury has wrongfully prejudiced my client in this case. If it had been lost, the Government had an obligation to advise the defense in advance of the cross examination of this witness that such a document was turned over to the Government and has been lost.

We have never had any such advice from the Government.

THE COURT: All right, I will deny your motion on the first point. I don't think the Government has any responsibility for that and I think some of it comes from the nature of the questions on cross examination.

But I will do everything I can to keep that from happening again.

On the second point, as I indicated, I will ask the Government to inquire from the agents whether there is such a document and then have them stipulate either there is or there isn't such a document. I will let it go at that.

MR. LITTLEFIELD: I believe that the Government does not at present have any such document.

THE COURT: I think that is right but I want you to ask the agents later if anybody can find such a document. I want you to stipulate if there is none,

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that the Government has no such document as was described by the witness.

MR. LITTLEFIELD: All right, your Honor.

THE COURT: All right, let us proceed.

MR. LITTLEFIELD: In connection with that I could perhaps get the ball rolling if I could make a 30 second call from your chambers.

THE COURT: Let's get the jury out. The most important thing in this weather is not to be dallying around with the jury. You can do that later on.

MR. LITTLEFIELD: I have two witnesses who come from Florida who are very short, and I would like to perhaps take them out of turn and get them on today.

THE COURT: All right. Well, now, you see it is now 2:00 o'clock. If we did that around 3:00 perhaps that would give him an opportunity to finish up.

MR. LITTLEFIELD: If it got to the end of the day I would like to put them on.

THE COURT: Bring it up then. We will get those witnesses in this afternoon.

(Jury present and witness present.)

THE COURT: All right, proceed, Mr. Boitel.

BY MR. BOITEL:

Q Mr. Barres, your salary from Farnsworth was

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$550 a month?

A My starting salary was $550 a month.

Q Is that approximately $6,500 a year or $7,000 a year?

A I didn't stay with that salary for very long.

Q When did you receive your first raise?

A About a month and a half later.

MR. LITTLEFIELD: Could we know what year we are talking about at this point?

THE WITNESS: '61.

Q And what were you raised to?

A I went to $800 a month. I became office manager.

Q At that point you were making about $9,600 a year. Is that correct?

A Plus the car allowance.

Q You continued receiving the car allowance?

A And gasoline.

Q But then you had car expenses, did you not?

A Yes. Gasoline they will take care of, mechanical repair they will take care of. That type of thing.

Q And you were paying off a car?

A I was being paid by the use of my car.

Q At the same time you were paying off the loan on the car?

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A I was paying $62.

Q So the car allowance pretty much cancelled out your loan?

A The payment.

Q When was your next raise at Farnsworth?

A I don't know when was my next raise because I was working there since 1961 through June 1967.

Q How much were you making when you left?

A I left I was making there about $2,500 a month when I left.

Q About $30,000 a year?

A Yes. At the same time I already had a business of my own since 1963.

Q And what was that business?

A While I was working with Farnsworth I was able to obtain the distribution but these are loades to put with pistols on the construction works. Also selling diamond blades for cutting concrete. This was from a company in Washington, D.C. named Ammo Products.

Later they were brought by United States Machinery.

Q Was that a successful operation for you?

A It was very humble at the time beginning because it was from my house garage, and I was selling plenty to

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the company that I was working for, to my boss for his projects. I had several other construction companies and subcontractors of my company that I obtained that they will buy. I was selling around $7,000 a month, with a 50 per cent profit at least on the tools and nails, and 30 per cent on the blades.

Q Did the top officials at Farnsworth know they were purchasing materials from you?

A Sure. Mr. Louis Leader, and Mr. Morton Novick.

Q Did anyone at Farnsworth receive any share of your profits?

A No, not at all. This was with the owner.

Q Pardon me?

A This was with the owner of the company himself, not with employees, the purchase of the material.

Q Yes, but did the owner receive a --

A No, he was not getting anything. Why he should get anything paid?

Q Did any of the employees get anything?

A No.

MR. BOITEL: May I have this marked as a defense exhibit?

(Pomares Exhibit A marked for identification.)

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MR. LITTLEFIELD: May I find out what year we are talking about?

THE COURT: I take it if we take a look at this exhibit it will say.

'63 I thought it was.

Q Is this Freca?

A Yes, 1963.

Q 1963 until when? How long did Freca last?

A Ten years. It is existing.

O When did you leave Farnsworth?

A I left Farnsworth in June 1967, but I changed jobs at Farnsworth. I was not the office manager after 1963. I became general sales manager of the company for selling houses.

Q Now, as of the time that you left Farnsworth -- in '67 was that?

A Yes.

Q How much were you making per year out of your Freca business?

A I could not -- if I give you I figure -- the money I was making in Freca, I was leaving it in Freca every year in order to make the company grow.

Q Well, approximately, was it more than $10,000 a year or less?

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A I couldn't tell you exactly because you have a gross profit and then you have to take expenses and I would not be accurate.

Q Were you making less than $30,000 a year?

A Yes, less.

Q Less than $25,000?

A Around that amount of money. I am talking at the beginning of the '63-'64.

Q I am talking about at the end, in '67 when you left Farnsworth.

A If I had been briefed I was going to be asked about my personal business I could have bring my accountant and the income tax papers and the statements and everything and I could verify this, because from memory it is impossible.

Q Have you brought any papers with you with regard to the Freca business?

A No, I don't have any paper with me.

THE COURT: Let me see counsel for a minute.

(At the side bar.)

THE COURT: I want to be as liberal as I can hear but I do think we are going up some alleys here. There weren't any reasons for him to bring any Freca papers here. Give me an offer of proof of what you are

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trying to show.

MR.BOITEL: What I am trying to show is that I have in my possession balance sheets for this man's personal income during the period -- I believe '70 and '72, both for the Freca business as well as for his personal.

THE COURT: Where do they come from?

MR. BOITEL: They came from my client.

MR. LITTLEFIELD: How did he get them?

MR. BOITEL: I have no idea.

THE COURT: I think I would be careful about this. If you are trying to destroy this fellow's credibility by papers showing his business relationship with your client, I am not sure that might not bounce on you. I am just suggesting that to you.

MR. LITTLEFIELD: I would certainly expect on redirect I would be able to go into where these papers came from and how he got ahold of them.

THE COURT: I would be careful about it. I want to give you all the latitude in the world but I do think some of this ancient history may react against you. The jury may get the idea this fellow is quite an able guy and if he is an able guy maybe they are more apt to believe his story.

Just be careful.

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(In open court.)

MR. BOITEL: May I have this marked as a defense exhibit, please.

(Defendant Pomares Exhibit B marked for identification.)

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MR. BOITEL: May I show the witness Pomares Exhibit B for identification?

THE COURT: Yes.

Q Mr. Pomares, would you examine that document --

A I am not Pomares, Barres.

Q Excuse me, Mr. Barres, will you kindly examine that document and just tell me whether you recognize it?

A Yes.

Q I ask you whether you recognize it. Do you?

A Yes.

Q What is it?

A Personal financial statement.

Q Whose personal financial statement?

A My personal financial statement.

Q You have seen it before?

A Sure.

Q And to the best of your knowledge -- for what year is that?

A This is 1970, June 1970.

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Q And to the best of your knowledge is that an accurate and true depiction of your financial condition as of, you say, June 1970?

A This is a certified statement. Yes.

Q Is that a true and accurate picture?

A I think so, sir.

Q Take the exhibit, please. What does that show --

A The public accountant say here, "In my opinion, the financial statement" --

Q I didn't ask you wnat the public accountant said.

MR. LITTLEFIELD: He asked what it showed.

THE COURT: He can answer that.

You say this is an accountant's statement. Is that right?

THE WITNESS: Yes.

Q Did you supply the accountant with the materials upon which he was able to make that financial statement?

A Correct.

Q And so it is your understanding that it is true and correct?

A To my understanding, yes.

Q Okay. Now, will you turn to the page of that exhibit which depicts what your assets were as of that date. Is that June 1970?

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A June 1970.

Q Yes.

Upon examining that depiction of assets, what was the total value of your assets as of June 1970?

A $205,729.

Q And are your liabilities listed there?

A My liabilities, loan payment, automobile $700.

Q And is your net worth depicted?

A $205,025.

Q Then is it a fact, sir, that from the time of your entry into this country with something in the area of $10,000 in 1963 -- '61, excuse me. That by June of 1970 that amount had grown to over $200,000?

A It was a period of 10 years, sir.

Q Is that a fact, sir?

A It is a fact, in accordance with what this statement says.

Q Now, will you kindly examine Defendant's or Pomares' Exhibit A. Do you recognize that, sir?

A Yes, I recognize it.

Q What is it?

A Financial statement.

Q Whose?

A My personal financial statement.

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Q For what year?

A For April 30, 1972.

Q Have you ever seen that before?

A Yes.

Q To the best of your knowledge is that a true and accurate depiction of your financial position as of April 1972?

A Well, if I can clarify on this front page, here it say, "All assets except the Freca Industrial Park were valued at cost. That property was appraised in May '71 by Mr. Rafael Tallada Silver, a professional appraisor in the amount of $858,000. In my opinion the accompanying balance sheet presently shows the financial position of Mr. Augustin Barres at April 30, 1972, in conformity with generally accepted accounting principles."

Q So then am I to understand, sir, that that document depicts your financial condition as of April 1972 with the exception of those of your assets which were in Freca Imports?

A I didn't get you.

Q With the exception --

A Could you repeat the word, the question that you asked.

(Question read.)

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A On the industrial park, yes.

Q Turn to the page which lists the total value of your assets as of April 1972.

What was the total value of your assets, not including Freca, in April of 1972?

A Well, you have to take $858,000 out of $1,608,000. Here you have also property at the appraised value.

THE COURT: Can you tell from that sheet what your assets were?

THE WITNESS: Your Honor, I went into so many different things at the same time that from one month to the other is impossible.

THE COURT: So you say you can't make it out?

THE WITNESS: I can't make it out from this statement.

Q Have you ever submitted this balance sheet to anyone for the purpose of establishing your net worth?

A I think that was my financial statement for purpose of establishing.

Q This is a document that you would give to people when they sought to inquire as to what you were presently worth; is that correct?

A When they were going to ask me.

Q Pardon me?

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A When they ask for a financial statement.

Q Is it not true that this document which you gave to people set forth that your assets as of April 30, 1972, totalled $1,608,780?

A Yes, including the $850,000 value of the property, which it didn't cost me that money.

Q What did that property cost you?

A It cost me $175,000.

Q And when did you buy it?

A In -- I think it was the late 1970 or late 1969. I am not sure. I had an 18-month option and then I bought it. I don't remember.

Q Well, I show you Exhibit B, which was your financial statement for June 1970.

A So then we are talking about March '71 -- February '71 when I close the transaction, but I had an option for 18 months.

Q And you paid how much for it, for the property?

A I paid 170,000 square feet of industrial land with the help of the financing company, because I didn't put a nickel on it. I pay $175,000 and Freca gave me -- invested I think about $120,000 in improvements to be depreciated during this 10 years. Then after I had finished we call an appraiser and he evaluate the property at

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$850,000.

Q Well, sir, doesn't Exhibit A, and you may look at it if you like, doesn't Exhibit A, that is your balance sheet for April 30, 1972, reveal that your liabilities at the time you listed assets of $1,608,000, your liabilities at that point totalled approximately $300,000?

A Yes.

Q Is that correct?

A It was correct. Mortgage is $175,000.

Q Now, the difference, therefore, between your assets and your liabilities was approximately $1,310,000; is that correct?

A Yes. This is in April '72.

Q That is correct.

So that--

A 13 years ago, since I came to this country.

Q Excuse me, sir. Is it not true that Exhibit B, which was your financial statement for June of '70, revealed that your net worth was approximately $200,000?

A '72; '71, do you have '71? Then this is '72.

Q In two years your net worth had increased by over a million dollars; isn't that true?

A Well, in theory of statements it is true. Like yesterday you could read that Mr. Getty, whatever it is,

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is $600,000,000 because of the energy crisis. That is the theory. Maybe tomorrow the stock go down all the way and it doesn't worth anything what he has.

Q That is what happened with the Freca land deal, is that right, $175,000 in and it appreciated to $800,000; right?

A It was an appraisal to be made by the bank and I have a good eye to buy real estate. It's not anything to be --

THE COURT: Well, it is your business?

THE WITNESS: That is my business.

Q If we disregard the Freca land deal altogether and subtract from $13,000 the $800,000 this was --

THE COURT: Don't subtract $800,000 from $13,000.

Q If we subtract the $800,000 from it, we still have $500,000, don't we?

A In assets, yes.

Q Yes. So that your assets, forgetting about Freca, just disregarding it completely --

A Included in that is the stock value of Freca also, on the '72 statement. I didn't specify to the jury here since 1967 I was very active mortgage broker and my income for that was between $50,000 and $60,000 a year, besides the Freca thing. If I may say, I have

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been working for 13 years with only four or five days I took in 1970, where I took my family, trying to save my marriage, to Spain.

Q However, the fact remains, sir, that during the two-year period from June of 1970 to April of 1972, if we exclude the Freca land purchase deal completely from the computation, your assets nevertheless rose from approximately $200,000 to $500,000?

A I will have to work this out.

MR. LITTLEFIELD: I think he just said '72 included the value of the Freca stock.

THE COURT: That's right. That is quite right.

THE WITNESS: Which is $190,000 already.

Q Where was the Freca stock or was the Freca stock at all taken into account in June 1970?

A Stock and surplus.

Q In June 1970?

A Yes, but it is supposed to be taken there.

Q I give you Exhibit B.

A I cannot recall.

Q You can look at it.

A I thought we were coming to deal in cocaine here.

It say stock, Freca Importers, $95,539, June 30, 1970. That is the stock that the company had at that

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moment, issued and surplus.

Now, in 1972, may I --

Q You can look at the figures yourself.

A 1972 Freca stock shows $150,197 in stock. It had just grow $60,000, the stock. Also I had EAG Enterprise commission that I earned, that they pay me in stock.

Q Then, sir, disregarding the Freca stock, which was an increase you say of approximately $60,000 during that two-year period, we still have almost four and a half million dollars worth of assets; is that correct?

A Four and a half million dollars?

Q I say $450,000.

THE COURT: You are getting all mixed up in these figures and I don't think it is helping the jury or me a bit

THE WITNESS: We will be here talking for three days about --

THE COURT: Don't worry about that, we won't be doing that, I promise you.

Q Your assets did increase from $200,000 to $450,000, your net worth, did it not?

A I don't recall.

MR. BOITEL: I offer Defendant's Exhibits A and B into evidence.

MR. LITTLEFIELD: Your Honor, I don't know under

what legal theory they are offered.

THE COURT: I don't think I will receive them. We will leave them marked for identification and we will consider them later on.

MR. LITTLEFIELD: The Government has no objection but I don't think they are legal documents.

THE COURT: I am inclined to agree with you.

MR. BOITEL: I respectfully except.

Q Now, Mr. Barres, why is it that you are testifying or that you have decided to cooperate with the Government?

A Why I am testifying?

Q Why did you decide to cooperate with the Government?

A If you call to cooperate with the Government to tell what happened and the truth that I was under arrest, the reason is that I was under arrest for having seven kilograms of cocaine.

Q Isn't it a fact, sir, that if you had not been arrested it was your intention to continue trafficking in cocaine?

A That is your theory, sir. Not mine.

Q I ask you.

A My associate Pomares and me we had arrived to the point that this was not paying to anybody to stick

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their neck for any money at all.

Q You mean as of that time you had decided to stop trafficking in cocaine?

A Well, that is what everybody said, but this is what I said. We had decided to stop.

Q Who did you tell that to?

A Mr. Pomares had agreed to that and I had agreed to that.

Q Did you tell anybody else about it?

A No, just with Pomares, that was my partner in that thing.

Q This was going to be your last deal?

A Going to be the last deal because the person that is involved in that cannot live at all.

Q Cannot live?

A Because of the pressure and the tension and all the things.

Q So it was your bad luck to be caught on your last deal; is that it?

A I think it was an act of God, which you deserve it, and more than anything here today I am spilling out my troubles to feel good with myself inside.

Q Now, it was not your intention to advise the Government of these criminal transactions had you not been

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caught, was it?

THE COURT: I think that is a pretty hard question to answer. The fact is he was caught.

THE WITNESS: You want I answer the question?

THE COURT: No, no.

Q You had indicated that during the transfer stage of the third transaction, that is the business with the second room and you say Pomares put the stuff in the second room and that you had given him a key, where did you get that key from?

A Well, in each hotel they have two keys. When I rented the two rooms at the Taft Hotel, which it was done with Mr. Hope, somebody that I knew for many years that I stay at the Taft Hotel, I told him that my family was coming. I got two keys of room on the right side, which I think was 1102 and one key of room 1101. That was my own personal room. I kept the two keys of one room.

Q Did you ever see the second key again?

A No.

THE COURT: Which key are you talking about?

MR. BOITEL: There was a key which he claimed he gave to Pomares, that Pomares was supposed to have been using to open the door.

Q Did you ever see that key again?

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A No.

THE COURT: You didn't see it again?

THE WITNESS: No.

Q Following your arrest did there come a time when you listened to any tape recordings?

A Following my arrest did I listen to tape recorder? No, the next day they tape recorded what I have said. That is what I know.

Q I asked you whether there came a time when you ever listened to any tape recordings in connection with this case?

A No, sir.

Q Never?

A No.

Q Did anyone ever tell you that the undercover people while dealing with you had tape recorders going or transmitters going?

A I didn't have the slightest idea that was being tape recorded.

Q Well, do you know that now?

A As you are saying that they had some tape recorder, now you are telling me that.

Q No one ever told you that?

A I was imagine myself they must have some tape

recorder because a conversation was taken in an office. It doesn't surprise me now with all this sophisticated equipments they have.

Q But you knew you were caught good?

A I was caught completely, without any doubt.

Q When this cocaine here was wrapped back in Florida, who did the wrapping?

A Both of us.

Q You handled the bags?

A I was pulling the package and he was pour the cocaine there one time. Another time he will hold and I will pour. I am sorry to smile is that sometime instead of crying you feel like a smile or something. That moment doesn't recall me very good memories.

Q Who packed it into the bag, the suitcase?

A The suitcase, the one that packed it was him.

THE COURT: Who is "him"?

THE WITNESS: Pomares.

Q How far back does your relationship with Pomares go?

A My relationship with Pomares, I think it was in 1967 that he came to work for me. Actually he was my right-hand man when I get divorce of my first wife in March 1971.

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Q He was your employee; is that correct?

A He was first employee and then associate. Not of Freca Importer but in the business of the land in Florida the General Development, which I suppose to be owner and now I find out I am not owner of the place.

Q That has nothing to do with Pomares?

A It has to do with Pomares. He took me out of the business.

Q Now, you trusted him when he worked for you, did you not?

A 100 per cent.

Q And he was a competent worker?

A He was, in spite of complaints from people against him, I always tried not to listen to anything against him and he was doing good work.

Q Would you sometimes send him to deliver papers?

A Sometime him --

Q Send him to deliver papers?

A To deliver papers?

Q Papers of any kind.

A He was in charge of my finances.

Q Did you ever send him to New York?

A No.

Q He never came to New York for you with regard

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to any of your businesses?

A No, sir. He came to New York in regards to his Occidental Educational Enterprise Group.

Q Were you involved in that?

A No. I was supposed to but I found out I am not.

Q Well, at the time of the transactions which form the basis for this trial, did you believe you were involved in Occidental?

A Did I believe what?

Q That you were involved in Occidental.

A I was supposed to have been 50 per cent owner of Occidental Investment but during the period of time, when I gave my first $3,000, he never issue the shares and he never gave me a statement of how Occidental was going. I let him go because every time I ask him, he say, "Mr. Barres, he is behind on the accounting and we are doing fine."

Q Was Occidental ever connected with any other organization?

A Occidental Enterprise was for the sale of land. Then he had the idea of setting up a school system by TV system, and he created Occidental Educational, an affiliate of Occidental Enterprise, but I did not participate. They never gave me any position.

MR. BOITEL: May I have one moment, please, your Honor?

THE COURT: Yes.

(Pause.)

MR. BOITEL: I have no further questions.

THE COURT: All right.

MR. LITTLEFIELD: May we have a brief recess? I want to try and get those --

THE COURT: We will take a short recess, ladies and gentlemen.

(Jury excused.)

MR. LITTLEFIELD: May I ask that we put the two witnesses from Miami on now?

THE COURT: Do you have any objection if he puts these two witnesses on?

MR. GARBER: No, sir.

MR. BOITEL: No, sir.

THE COURT: Then you will be excused for a little while because the Government has two short witnesses from Florida.

We will do that.

(Recess.)

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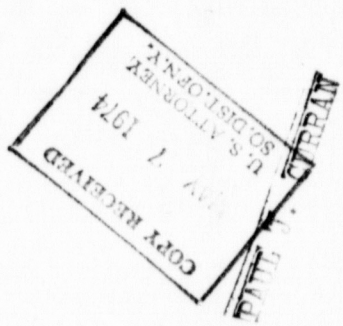

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